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AN ACT to amend and reenact sections one, two, three and four, article fifteen-b, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections, designated sections five and six, all relating to uniform health care administration, the transfer of responsibilities to develop standard forms and procedures regarding health care claims and all other requirements and procedures under this article from the authority of the insurance commissioner to the West Virginia health care authority; and establishing penalties for violation of the uniform health care administration act.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three and four, article fifteen-b, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and to further amend said article by adding thereto two new sections, designated sections five and six, all to read as follows:

ARTICLE 15B. UNIFORM HEALTH CARE ADMINISTRATION ACT.

§33-15B-1. Legislative findings; purpose.
§33-15B-2. Scope of article.
§33-15B-3. Health care authority to promulgate rules; use of standardized forms and classifications; advisory group.
§33-15B-4. Compliance period; reservation of right to additional information.
§33-15B-5. Penalties for violation.
§33-15B-6. Citation of article.
§33-15B-1. Legislative findings; purpose.

The Legislature hereby finds that there is a need to provide guidelines regarding uniform health care administration in order to best serve consumers, health care providers and insurers and to organize and streamline the claims process. The purpose of this article is to require the transfer of the authority of the insurance commissioner to develop standard forms and procedures regarding health care claims and to require that all insurers, third party providers, and health care providers implement and use such standards in a uniform manner to the West Virginia health care authority. The West Virginia health care authority is responsible for coordinating and overseeing the health data collection in West Virginia and coordinating database development, analysis and reporting to facilitate cost management, utilization review, and quality assurance efforts by state payors and regulatory agencies, insurers, consumers, providers, and other interested parties. The Legislature finds that the West Virginia health care authority is the appropriate agency to oversee the development of standard forms and procedures regarding health care claims. Thus, the Legislature hereby transfers the responsibilities to develop standard forms and procedures regarding health care claims and all other requirements and procedures under this article to the West Virginia health care authority.

§33-15B-2. Scope of article.

The provisions of this article apply to all health care providers in the state, including but not limited to, all insurers writing or issuing accident and sickness policies; hospital service corporations; health service corporations; medical service corporations; dental service corporations; all third party providers; all state agencies and departments, including, but not limited to, the public employees insurance agency, workers’ compensation insurance, and providers of services under medicare and medicaid.
§33-15B-3. Health care authority to promulgate rules; use of standardized forms and classifications; advisory group.

(a) The West Virginia health care authority shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code regarding the implementation and use of uniform health care administrative forms. Such rules shall establish, where practicable, the acceptance and use throughout the health care system of standard administrative forms, terms or procedures, including, but not limited to, the following:

(1) The standard health care financing administration fifteen hundred (HCFA 1500) health insurance claim form, as amended, or other similar forms, terms, and definitions to be used which are consistent with health care and insurance industry standards.

(2) International classification of disease, ninth clinical modifications (ICD-9-CM) and common procedural terminology (CPT) codes, as amended, or other similar forms, terms, and definitions to be used which are consistent with health care and insurance industry standards.

(3) National uniform billing data element specifications (UB-92), as amended, and as supplemented by the West Virginia uniform billing committee, or other similar forms, terms, and definitions to be used which are consistent with health care and insurance industry standards.

(4) Consideration of current practices involving reimbursement of claims and explanation of benefits, and the implementation of standards and guidelines regarding explanation of benefits, including, but not limited to, consideration of line item explanations of payments or denial of payments.
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(b) The legislative rules required herein shall be developed by the West Virginia health care authority with the advice of an advisory group to be appointed by the board of the West Virginia health care authority. Such advisory group shall consist of representatives of consumers, providers, payors, and regulatory agencies, including representatives from the following: The office of the insurance commissioner; the West Virginia health care authority; West Virginia dental association; West Virginia pharmacists association; the West Virginia hospital association; commercial health insurers; third party administrators; the West Virginia state medical association; the West Virginia nurses association; public employees insurance agency; workers’ compensation commission; and consumers. The West Virginia health care authority shall form such advisory group after the effective date of this section.

(c) The West Virginia health care authority and the advisory group shall review the legislative rules effected pursuant to this section as necessary and update the same in a timely manner in order to conform to current legislation and health care and insurance industry standards and trends.

§33-15B-4. Compliance period; reservation of right to additional information.

(a) All health care providers, insurers, third party providers and state agencies or departments shall have one year from the date the West Virginia health care authority establishes the legislative rules required by this article to comply with the requirements of the same.

(b) This section shall not limit the right of any insurer, third party provider, state agency or department to require additional information on any claim.

§33-15B-5. Penalties for violation.
Any person, partnership, corporation, limited liability
company, professional corporation, health care provider or
other entity violating any provision of this article shall be guilty
of a misdemeanor and, upon conviction shall be punished by a
fine of not more than one thousand dollars. Each day of
continuing violation after conviction shall be considered a
separate offense. The West Virginia health care authority is
empowered to withhold rate approval or a certificate of need for
any health care provider violating any provision of this article.

§33-15B-6. Citation of article.

This article may be known as the "Uniform Health Care
Administration Act."

CHAPTER 152

(Com. Sub. for H. B. 4502 — By Delegates Beane,
Mahan, Hutchins, Cann, H. White and Paxton)

[Passed March 7, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article twenty-two,
chapter thirty-three of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to farmers’ mutual
fire insurance companies; allowing the companies to insure
property located outside of this state; and providing minimum
capital and surplus requirements for the companies conducting
insurance business outside of this state.

Be it enacted by the Legislature of West Virginia:

That section eight, article twenty-two, 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 22. FARMERS’ MUTUAL FIRE INSURANCE COMPANIES.

(a) Any company subject to the provisions of this article may issue policies of insurance on property, signed by its president and secretary, providing insurance against:

(1) Loss or damage to dwelling houses, stores and all kinds of buildings and household furniture, goods, merchandise and chattels of every description, and all other property by fire, and allied coverages, including lightning, aircraft, windstorm, tornado, cyclone, hail, frost or snow, smoke, weather or climatic conditions, including excess or deficiency of moisture, flood, rain or drought, business interruptions, riot attending a strike or civil commotion, riot, vehicle and by explosion whether fire ensues or not;

(2) Loss or damage by insects or disease to farm crops or products and loss of rental value of land used in producing those crops or products;

(3) Loss or damage by water or other fluid to any goods or premises arising from the breakage or leakage of sprinklers, pumps or other apparatus erected for extinguishing fires, or of other conduits or containers, or by water entering through leaks or openings in buildings and of water pipes, and against accidental injury to such sprinklers, pumps, apparatus, conduits, containers or water pipes;

(4) Loss or damage to domestic farm animals by dogs or wild animals.

(b) The commissioner may, for good cause shown or on application of the company, limit the license of a company to make insurance to any one or more of the perils or coverages set forth in subsection (a) of this section.

(c) In addition any such company may apply to the commissioner for an extension of its license, and upon complying with reasonable standards established by the commissioner to assure the solvency of the company and the protection of its policyholders, may in the discretion of the commissioner be granted an extension of its license to permit the company to issue
policies of insurance on risks insuring against one or more of
the following:

(1) Legal liability for the death, injury, or disability of any
human being, or for damage to property, excluding liability
resulting from the ownership, maintenance, or use of vehicles
or aircraft; and provisions for medical, hospital, surgical and
disability benefits to injured persons and funeral and death
benefits to dependents, beneficiaries or personal representatives
of persons killed, irrespective of legal liability of the insured,
when issued as an incidental coverage with or supplemental to
the liability coverage.

(2) Loss or damage to property by burglary, theft, larceny,
robbery, vandalism, malicious mischief, or wrongful conver-
sion, or any attempt at any of the foregoing.

(3) Personal property floater insurance.

(d) A company insuring property located outside this state
must meet the capital and surplus requirements of section five-
b, article three of this chapter.

CHAPTER 153

(H. B. 4742 — By Delegates Beane, Facemyer, L. White and Stalnaker)

[Passed March 8, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article twenty-four,
chapter thirty-three of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to investment of
funds by hospital service, medical service, dental service and
health service corporations; approving repurchase agreements
allowable investments.

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

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

§33-24-10. Investments; bonds of corporate officers and employees, minimum statutory surplus.

(a) The funds of any such corporation shall be invested only as follows:

(1) Fifty percent of such funds shall be in cash or government securities of the type described in section seven of article eight of this chapter.

(2) The balance of such funds may be in cash or invested in the classes of investments described in the following sections of article eight of this chapter: Section nine (certificates of deposit of federally insured institutions), section eleven (corporate obligations), section twelve (building and savings and loan shares, international bank), section thirteen (preferred or guaranteed stock), section fourteen (common stock), section sixteen (real property), section eighteen (revenue bonds), and section twenty-three (repurchase agreements). All such investments shall be subject to all the restrictions and conditions contained in said article eight as applying to similar investments of insurers generally.

(b) Every officer or employee of any such corporation, who is entrusted with the handling of its funds, shall furnish, in such amount as may with the approval of the commissioner be fixed by the board of directors of the corporation, a bond with corporate surety, conditioned upon the faithful performance of all his or her duties.
(c) A corporation shall have and maintain statutory surplus funds of at least two million dollars: Provided, That any such corporation duly licensed under this article in West Virginia prior to the effective date of this section whose surplus requirements are increased by virtue of this section shall be required to maintain statutory surplus funds of at least five hundred thousand dollars after the effective date of this section, and any such corporation shall then be subject to the full two million dollar statutory surplus requirement after the first day of October, one thousand nine hundred ninety-one.

CHAPTER 154

(Com. Sub. for S. B. 630 — By Senators Helmick, Ross, Craigo, Fanning, Plymale, Dawson and Unger)

[Passed March 10, 2000; in effect from passage. Approved by the Governor.]
hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section eight-a, all to read as follows:

ARTICLE 7. JOBS INVESTMENT TRUST FUND.

§12-7-2. Legislative findings.
§12-7-3. Definitions.
§12-7-4. Jobs investment trust board; composition; appointment, term of private members; chairman; quorum.
§12-7-5. Management and control of jobs investment trust vested in board; officers; liability; authority of executive director to act on behalf of board; relationship to higher education institutions.
§12-7-6. Corporate powers.
§12-7-8a. New millennium fund; new millennium fund promissory notes; nonincentive tax credits; rule making.
§12-7-9. Applications for investment priority; investment package.
§12-7-16. Credit of state not pledged.

§12-7-2. Legislative findings.

(a) The Legislature finds that the creation of a public body corporate to make investment funds available to eligible businesses would stimulate economic growth and provide or retain jobs within the state. Accordingly, it is declared to be the public policy of the state to create an investment program to inject needed capital into the business community, sustain or improve business profitability and provide jobs to the citizens of the state.

(b) The Legislature further finds that:

(1) The availability of financial assistance through the creation of the jobs investment trust will promote economic development in the state and will serve the public purposes of the state;

(2) The public policy of the state will be served through financing projects, extending loans, providing financing or credit for working capital, creating innovative investment plans
and options, and providing equity financing or the refinancing of existing debt of an enterprise;

(3) It is in the public interest, in order to address the needs of the business community and the citizens of the state, that a public body corporate be created with full power to accept grants, gifts and appropriations; to generate revenues to furnish money and credit to approved businesses or enterprises; to promote the establishment of new and innovative projects; and to upgrade, expand and retain existing projects; and

(4) Fundamental changes are occurring in national and international markets that increase the need for debt financing, equity capital and near-equity capital for emerging, expanding and restructuring business opportunities in the state.

(c) The Legislature further finds:

(1) That due to the creation of the jobs investment trust, moneys will be available for venture capital in this state;

(2) That the implementation of this innovative program may supplant the need for the state to otherwise assist private venture capital concerns through other tax credits;

(3) That due to the availability of venture capital funds through this program the granting of venture capital company credits under the capital company act should be reduced for three fiscal years pending the full implementation of the jobs investment trust program;

(4) That due to this reduction in the certification of tax credits, additional general revenue may become available for new economic development programs;

(5) These economic development programs may be funded from general revenue in an amount appropriate to effectuate the purposes of these programs; and
47 (6) Due to the foregoing findings there shall be an annual
48 line item appropriation, in an amount determined by the
49 Legislature, to the West Virginia development office for a
50 matching grant program for regional economic development
51 corporations or authorities.

§12-7-3. Definitions.

1 For purposes of this article:
2 (a) “Board” means the jobs investment trust board estab-
3 lished pursuant to section four of this article.
4 (b) “Eligible business” means any business, including, but
5 not limited to, a business licensed or seeking licensure by the
6 small business administration as a small business investment
7 company under the small business investment act, which is
8 qualified to do business in West Virginia and is in good
9 standing with all applicable laws affecting the conduct of such
10 business.
11 (c) “Nonincentive Tax Credits” means the nonincentive tax
12 credits issued by the state to the jobs investment trust board and
13 authorized for sale and transfer by the jobs investment trust
14 board pursuant to section eight-a of this article.
15 (d) “Securities” means all bonds, notes, stocks, units of
16 ownership, debentures or any other form of negotiable or
17 nonnegotiable evidence of indebtedness or ownership.

§12-7-4. Jobs investment trust board; composition; appointment,
    term of private members; chairman; quorum.

1 (a) The jobs investment trust board is continued. The board
2 is a public body corporate and established to improve and
3 otherwise promote economic development in this state.
4 (b) The board consists of thirteen members, five of whom
5 serve by virtue of their respective positions. These five are the
6 president of West Virginia university or his or her designee; the
7 president of Marshall university or his or her designee; the
8 chancellor of the board of directors of the state college system
9 or his or her designee; the executive director of the West
10 Virginia housing development fund; and the executive director
11 of the West Virginia development office. Two members shall
12 be appointed by the governor from a list of four names submit-
13 ted by the board of directors of the housing development fund.
14 The other six members shall be appointed from the general
15 public by the governor. Of the members of the general public
16 appointed by the governor, one shall be an attorney with
17 experience in finance and investment matters, one shall be a
18 certified public accountant, one shall be a representative of
19 labor, one shall be experienced or involved in innovative
20 business development, two shall be present or past executive
21 officers of companies listed on a major stock exchange or large
22 privately held companies.
23
24 (c) A vacancy on the board shall be filled by appointment
25 by the governor for the unexpired term in the same manner as
26 the original appointment. Any person appointed to fill a
27 vacancy serves only for the unexpired term.
28
29 (d) The governor may remove any appointed member in
30 case of incompetency, neglect of duty, moral turpitude or
31 malfeasance in office and the governor may declare the office
32 vacant and fill the vacancy as provided in other cases of
33 vacancy.
34
35 (e) The chairman of the board shall be elected by the board
36 from among the members of the board.
37
38 (f) Seven members of the board is a quorum. No action may
39 be taken by the board except upon the affirmative vote of at
40 least a majority of those members present, but in no event fewer
41 than six of the members serving on the board.
42
43 (g) The members of the board, including the chairman, may
44 receive no compensation for their services as members of the
board but are entitled to their reasonable and necessary expenses actually incurred in discharging their duties under this article.

(h) The board shall meet on a quarterly basis or more often if necessary.

(i) The terms of the board members appointed by the governor first taking office on or after the one thousand nine hundred ninety-two effective date of the jobs investment trust act expired as designated by the governor at the time of the nomination, two at the end of the first year, two at the end of the second year, two at the end of the third year and two at the end of the fourth year. These original appointments were for and each subsequent appointment was and shall be for a full four-year term. Any member whose term has expired serves until his or her successor has been duly appointed and qualified. Any member is eligible for reappointment.

(j) Additionally, one member of the West Virginia House of Delegates and one member of the West Virginia Senate shall serve as advisory members of the jobs investment trust board and, as advisory members, shall be ex officio, nonvoting advisory members. The governor shall appoint the two legislative ex officio advisory members who shall serve for four years or such shorter time as he or she continues to be a West Virginia legislator.

§12-7-5. Management and control of jobs investment trust vested in board; officers; liability; authority of executive director to act on behalf of board; relationship to higher education institutions.

(a) It is the duty of the board to manage and control the jobs investment trust. In order to carry out the day-to-day management and control of the trust and effectuate the purposes of this article, the board shall appoint an executive director who is or has been a senior executive of a major financial institution,
brokerage firm, investment firm or similar institution, with
extensive experience in capital market development. The board
shall fix the executive director’s duties. The board shall fix the
compensation of the executive director and the compensation
shall, at least in part, be incentive based. The executive director
serves at the will and pleasure of the board.

(b) The board shall elect a secretary annually, who need not
be a member of the board, to keep a record of the proceedings
of the board.

(c) The members and officers of the board are not liable
personally, either jointly or severally, for any debt or obligation
created by the board.

(d) The acts of the board are solely the acts of its corpora-
tion and are not those of an agent of the state. No debt or
obligation of the board is a debt or obligation of the state.

(e) Upon the affirmative vote of at least a majority of those
members in attendance or participating in a meeting of the
board, but in no event fewer than six of the members serving on
the board, the board may approve any action to be taken and
authorize the executive director for and on behalf of the board
to execute and deliver all instruments, agreements or other
documents that are required or are reasonably necessary to
effectuate the decisions or acts of the board.

(f) The West Virginia housing development fund shall
provide office space and staff support services for the director
and the board shall act as fiscal agent for the board and, as such,
shall provide accounting services for the board, invest all funds
as directed by the board, service all investment activities of the
board and shall make the disbursements of all funds as directed
by the board, for which the West Virginia housing development
fund shall be reasonably compensated, as determined by the
board.
(g) The board and the executive director shall involve students and faculty members of state institutions of higher education in the board’s activities, in order to enhance the opportunities at the institutions for learning, and for participation in the board’s investment activities and in the economic development of the state, whether in research, financial analysis, management participation, or in such other ways as the board and the executive director may, in their discretion, find appropriate.

§12-7-6. Corporate powers.

The board has the power:

1. (1) (a) To make loans to eligible businesses with or without interest secured if and as required by the board; and (b) to acquire ownership interests in eligible businesses. These investments may be made in eligible businesses that stimulate economic growth and provide or retain jobs in this state, and shall be made only upon the determination by the board that the investments are prudent and meet the criteria established by the board;

2. (2) To accept appropriations, gifts, grants, bequests and devises and to use or dispose of them to carry out its corporate purposes;

3. (3) To make and execute contracts, releases, compromises, agreements and other instruments necessary or convenient for the exercise of its powers or to carry out its corporate purposes;

4. (4) To collect reasonable fees and charges in connection with making and servicing loans, notes, bonds, obligations, commitments and other evidences of indebtedness, in connection with making equity investments and in connection with providing technical, consultative and project assistance services;

5. (5) To sue and be sued;
(6) To make, amend and repeal bylaws and rules consistent with the provisions of this article;

(7) To hire its own employees, whom shall be employees of the state of West Virginia for purposes of articles ten and sixteen, chapter five of this code, and to appoint officers and consultants, and to fix their compensation and prescribe their duties;

(8) To acquire, hold and dispose of real and personal property for its corporate purposes;

(9) To enter into agreements or other transactions with any federal or state agency, college or university, any person and any domestic or foreign partnership, corporation, association or organization;

(10) To acquire real property, or an interest in real or personal property, in its own name, by purchase or foreclosure when acquisition is necessary or appropriate to protect any loan in which the board has an interest; to sell, transfer and convey any real or personal property to a buyer; and, in the event a sale, transfer or conveyance cannot be effected with reasonable promptness or at a reasonable price, to lease real or personal property to a tenant;

(11) To purchase, sell, own, hold, negotiate, transfer or assign: (i) Any mortgage, instrument, note, credit, debenture, guarantee, bond or other negotiable instrument or obligation securing a loan, or any part of a loan; (ii) any security or other instrument evidencing ownership or indebtedness; or (iii) equity or other ownership interest. An offering of one of the above instruments shall include the representation and qualification that the board is a public body corporate managing a venture capital fund that includes high-risk investments and, that in any transfer, sale or assignment of any interest, the transferee, purchaser or assignee accepts any risk without recourse to the jobs investment trust or to the state;
(12) To procure insurance against losses to its property in amounts, and from insurers, as is prudent;

(13) To consent, when prudent, to the modification of the rate of interest, time of maturity, time of payment of installments of principal or interest, or any other terms of the investment, loan, contract or agreement in which the board is a party;

(14) To establish training and educational programs to further the purposes of this article;

(15) To file its own travel rules;

(16) To borrow money to carry out its corporate purpose in principal amounts and upon terms as are necessary to provide sufficient funds for achieving its corporate purpose;

(17) To take options in or warrants for, subscribe to, acquire, purchase, own, hold, transfer, sell, vote, employ, mortgage, pledge, assign, pool or syndicate: (i) Any loans, notes, mortgages or securities; (ii) debt instruments, ownership certificates or other instruments evidencing loans or equity; or (iii) securities or other ownership interests of or in domestic or foreign corporations, associations, partnerships, limited partnerships, limited liability partnerships, limited liability companies, joint ventures or other private enterprise to foster economic growth, jobs preservation and creation in the state of West Virginia, and all other acts that carry out the board’s purpose;

(18) To contract with either Marshall university or West Virginia university, or both, for the purpose of retaining the services of, and paying the reasonable cost of, services performed by the institution for the board in order to effectuate the purposes of this article;

(19) To enter into collaborative arrangements or contracts with private venture capital companies when considered advisable by the board;
(20) To provide equity financing for any eligible business that will stimulate economic growth and provide or retain jobs in this state, and to hold, transfer, sell, assign, pool or syndicate, or participate in the syndication of, any loans, notes, mortgages, securities, debt instruments or other instruments evidencing loans or equity interest in furtherance of the board’s corporate purposes;

(21) To form partnerships, create subsidiaries or take all other actions necessary to qualify as a small business investment company under the United States Public Law (85-699) Small Business Investment Act, as amended; and

(22) To provide for staff payroll and make purchases in the same manner as the housing development fund.

§12-7-8a. New millennium fund; new millennium fund promissory notes; nonincentive tax credits; rule making.

(a) The new millennium fund is established to permit the board to better fulfill its mission to mobilize financing and capital for emerging, expanding and restructuring businesses in the state. New millennium fund moneys are to consist of all appropriations for use by the jobs investment trust board made by the Legislature subsequent to the thirty-first day of December, one thousand nine hundred ninety-nine, and funds borrowed from private or institutional lenders by the board through the issuance of promissory notes. Fund moneys may be held in a separate account or accounts by or at the West Virginia housing development fund for the board until the board disburses any portion of the funds. Fund moneys that are not set aside or otherwise designated for paying interest on the promissory notes may be used by the board in accordance with and to effectuate the purposes of this article. The board may impose reasonable fees and charges associated with its investment of funds from the new millennium fund in eligible businesses to be paid in any combination of money, warrants or equity interests.
(b) Without limiting the powers otherwise enumerated in this article, the board has the power to: (1) Sell and transfer portions of the nonincentive tax credits created, issued and transferred to the board pursuant to the provisions of this section to contracting taxpayers and/or their assigns in return for the payments described in subsection (f) of this section; (2) issue or provide promissory notes on loans made to the board having terms of up to ten years on a zero-coupon basis or otherwise; (3) enter into put options or similar commitment contracts with taxpayers that would be for terms of up to ten years committing, at the board’s option, to sell and transfer to the contracting taxpayers or their assigns at the end of the term and as soon after the term as is reasonable under the circumstances portions of the nonincentive tax credits created, issued and transferred to the board pursuant to this section; (4) grant, transfer and assign the benefits of the put options or similar commitment contracts as collateral to secure the board’s obligations pursuant to its promissory notes; and (5) satisfy the board’s payment obligations under its promissory notes from assets of the board, other than the benefits of the put options or similar commitment contracts, then to effect a corresponding cancellation of the board’s related nonincentive tax credit commitment. The terms and conditions of the promissory notes, put options or similar commitment contracts shall be consistent with the purposes of this section, and approved by board resolution, and may be different for separate transactions.

(c) Without limiting the powers otherwise enumerated in this article and with regard to the new millennium fund, the board has and may exercise all powers necessary to further the purposes of this section, including, but not limited to, the power to commit, sell and transfer nonincentive tax credits up to the total amount of thirty million dollars.

(d) The board may issue its promissory notes pursuant to this section in amounts totaling no more than six million dollars in each of the fiscal years ending in two thousand one, two...
thousand two, two thousand three, two thousand four and two thousand five, and may issue its nonincentive tax credit commitments in amounts totaling no more than six million dollars in each of the fiscal years ending in two thousand one, two thousand two, two thousand three, two thousand four and two thousand five. The board may agree to sell and transfer at its option, nonincentive tax credits to taxpayers ten years after the date of its commitments, and as soon thereafter as it is reasonable under the circumstances.

(e) Prior to committing to the sale and transfer of any nonincentive tax credits, the board shall first determine that:

(1) The new millennium fund moneys to be received in relationship to the commitment shall be used for the development, promotion and expansion of the economy of the state; and

(2) The existence and pledge of a put option or similar commitment contract that is supported by the nonincentive tax credits that are committed by the board is a material inducement to the private or institutional lender transferring moneys to the board to be placed in the new millennium fund.

(f) The board may sell and transfer nonincentive tax credits only in conjunction with the satisfaction of its obligations under its promissory notes issued pursuant to this section. Each original sale and transfer of nonincentive tax credits by the board shall be consummated upon payment to the board, or for its benefits, of an amount equal to the dollar amount of the nonincentive tax credits sold and transferred minus the amount of any federal tax deduction lost by the purchasing taxpayer, if any, resulting from the purchase and projected use of the nonincentive tax credit in satisfying state tax obligations. The nonincentive tax credits sold and transferred by the board pursuant to this section shall be claimed as a credit on the tax returns for the year or years in which the nonincentive tax credits are sold and transferred by the board. The amount of the
nonincentive tax credit that exceeds the taxpayer's tax liability for the taxable year in the year of the purchase may be carried to succeeding taxable years until used in full up to two years after the year of purchase, and may not be carried back to prior taxable years. Any nonincentive tax credit sold and transferred by the board that remains outstanding after the third taxable year subsequent to and including the year of the transfer is forfeited.

(g) Nonincentive tax credits are created, issued and transferred by the state to the board in a total amount of thirty million dollars to be used by taxpayers, including persons, firms, corporations and all other business entities, to reduce the tax liabilities imposed upon them pursuant to articles twelve-a, thirteen, thirteen-a, thirteen-b, twenty-one, twenty-three and twenty-four, chapter eleven of this code. The total amount of nonincentive tax credits that are created, issued and transferred to the board is thirty million dollars. The nonincentive tax credits are freely transferable to subsequent transferees. The board shall immediately notify the president of the Senate, the speaker of the House of Delegates and the governor in writing if and when any nonincentive tax credits are sold and transferred by the board.

(h) In conjunction with the department of tax and revenue, the board shall develop a system for: (i) Registering nonincentive tax credits, commitments for the sale and transfer of nonincentive tax credits, the assignments of the commitments and the assignments of the nonincentive tax credits; and (ii) certifying nonincentive tax credits so that when nonincentive tax credits are claimed on a tax return, they may be verified as validly issued by the board, properly taken in the year of claim and in accordance with the requirements of this section.

(i) The board may promulgate, repeal, amend and change rules consistent with the provisions of this article to carry out
the purposes of this section. These rules are not subject to the provisions of chapter twenty-nine-a of this code, but shall be filed with the secretary of state.

§12-7-9. Applications for investment priority; investment package.

(a) The board shall accept and review applications from eligible businesses and shall determine the investment worthiness, the benefits to the West Virginia economy, the leverage potential for investments in a small business investment companies, the jobs creation potential and the economic circumstances of the region or regions of the state that would benefit from each proposal. The board shall attempt to balance its investments, as nearly as is practicable, among the geographic regions of the state.

(b) Any faculty or students of a public or private institution of higher education in the state may present for the board's consideration proposals relating to innovative projects or investment opportunities.

(c) An annual audit shall be conducted by an independent firm of certified public accountants and shall be made available to the Legislature annually.

(d) The board shall forward to the West Virginia housing development fund for its review and information approved investment packages containing information as is necessary to permit the West Virginia housing development fund to carry out its duties under this article. The board shall determine whether each applicant is an eligible business.

§12-7-16. Credit of state not pledged.

The provisions of this article do not and shall not be construed to authorize the jobs investment trust board at any time or in any manner to grant or pledge the credit or taxing power of the state. None of the obligations or debts created by
the jobs investment trust board under the authority granted in this article are or are to be construed to be obligations of the state.

CHAPTER 155
(Com. Sub. for S. B. 103 — By Senator Fanning)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four and fourteen, article eleven, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the West Virginia contractor licensing board; the composition and residency requirements of the board; disciplinary powers of the board; board administrative appeal hearings; and legislative rules.

Be it enacted by the Legislature of West Virginia:

That sections four and fourteen, article eleven, 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 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.

§21-11-4. West Virginia contractor licensing board created; members; appointment; terms; vacancies; qualifications; quorum.


§21-11-4. West Virginia contractor licensing board created; members; appointment; terms; vacancies; qualifications; quorum.

(a) There is hereby created the West Virginia contractor licensing board. The board shall consist of ten members appointed by the governor by and with the advice and consent
of the Senate for terms of four years. Such members shall serve
until their successors are appointed and have qualified. Eight of
the appointed members shall be owners of businesses engaged
in the various contracting industries, with at least one member
appointed from each of the following contractor classes: One
electrical contractor, one general building contractor, one
general engineering contractor, one heating, ventilating and
cooling contractor, one multifamily contractor, one piping
contractor, one plumbing contractor and one residential
contractor, as defined in section three hereof. Two of the
appointed members shall be building code officials who are not
members of any contracting industry. At least three members of
the board shall reside at the time of their appointment in each
congressional district as existing on the first day of January, one
thousand nine hundred ninety-eight. The commissioner of
labor, the secretary of the department of tax and revenue or his
designee, and the commissioner of the bureau of employment
programs or his designee shall be ex officio nonvoting members
of the board.

(b) Terms of the members first appointed shall be two
members for one year, two members for two years, three
members for three years and three members for four years, as
designated by the governor at the time of appointment. Thereafer,
terms shall be for four years. A member who has served all
or part of two consecutive terms shall not be subject to reappoint
ment unless four years have elapsed since the member last
served. Vacancies shall be filled by appointment by the
governor for the unexpired term of any member whose office is
vacant and shall be made within sixty days of the occurrence of
the vacancy. A vacancy on the board shall not impair the right
of the remaining members to exercise all the powers of the
board.

(c) The board shall elect a chair from one of the voting
members of the board. The board shall meet at least once
annually and at such other times as called by the chair or a majority of the board. Board members shall receive no remuneration for their service, but shall be reimbursed for their actual expenses incurred in the performance of their duties as such. A majority of the membership of the board shall constitute a quorum of the board.


(a) The board has the power and authority to impose the following disciplinary actions:

(1) Permanently revoke a license;

(2) Suspend a license for a specified period;

(3) Censure or reprimand a licensee;

(4) Impose limitations or conditions on the professional practice of a licensee;

(5) Impose requirements for remedial professional education to correct deficiencies in the education, training and skill of a licensee; and

(6) Impose a probationary period requiring a licensee to report regularly to the board on matters related to the grounds for probation; the board may withdraw probationary status if the deficiencies that require the sanction are remedied.

(b) The board may summarily suspend a licensee pending a hearing or pending an appeal after hearing upon a determination that the licensee poses a clear, significant and immediate danger to the public health and safety.

(c) The board may reinstate the suspended or revoked license of a person, if, upon a hearing, the board finds and determines that such person is able to practice with skill and safety.
(d) The board may accept the voluntary surrender of a license: *Provided,* That such license may not be reissued unless the board determines that the licensee is competent to resume practice and the licensee pays the appropriate renewal fee.

(e) A person or contractor adversely affected by disciplinary action may appeal to the board within sixty days of the date such disciplinary action is taken. The board shall hear the appeal within thirty days from receipt of notice of appeal in accordance with the provisions of chapter twenty-nine-a of this code. Hearings shall be held in Charleston. The board may retain a hearing examiner to conduct the hearings and present proposed findings of fact and conclusions of law to the board for its action.

(f) Any party adversely affected by any action of the board may appeal such action pursuant to the provisions of chapter twenty-nine-a of this code.

(g) The following are causes for disciplinary action:

(1) Abandonment, without legal excuse, of any construction project or operation engaged in or undertaken by the licensee;

(2) Willful failure or refusal to complete a construction project or operation with reasonable diligence, thereby causing material injury to another;

(3) Willful departure from or disregard of plans or specifications in any material respect without the consent of the parties to the contract;

(4) Willful or deliberate violation of the building laws or regulations of the state or of any political subdivision thereof;

(5) Willful or deliberate failure to pay any moneys when due for any materials free from defect, or services rendered in connection with such person's operations as a contractor when
such person has the capacity to pay or when such person has received sufficient funds under the contract as payment for the particular construction work for which the services or materials were rendered or purchased, or the fraudulent denial of any amount with intent to injure, delay or defraud the person to whom the debt is owed;

(6) Willful or deliberate misrepresentation of a material fact by an applicant or licensee in obtaining a license, or in connection with official licensing matters;

(7) Willful or deliberate failure to comply in any material respect with the provisions of this article or the rules of the board;

(8) Willfully or deliberately acting in the capacity of a contractor when not licensed, or as a contractor by a person other than the person to whom the license is issued except as an employee of the licensee;

(9) Willfully or deliberately acting with the intent to evade the provisions of this article by: (i) Aiding or abetting an unlicensed person to evade the provisions of this article; (ii) combining or conspiring with an unlicensed person to perform an unauthorized act; (iii) allowing a license to be used by an unlicensed person; or (iv) attempting to assign, transfer or otherwise dispose of a license or permitting the unauthorized use thereof;

(10) Engaging in any willful, fraudulent or deceitful act in the capacity as a contractor whereby substantial injury is sustained by another; or

(11) Performing work which is not commensurate with a general standard of the specific classification of contractor or which is below a building or construction code adopted by the municipality or county in which the work is performed.
In all disciplinary hearings the board has the burden of proof as to all matters in contention. No disciplinary action shall be taken by the board except on the affirmative vote of at least six members thereof. Except for violations of section thirteen of this article, no disciplinary action shall be taken by the board for any such cause as is set out herein unless the licensee has been finally adjudicated as having perpetrated such act in a court of record: Provided, That, after the effective date of the legislative rules required by subsection (i) of this section, no disciplinary action may be taken by the board for any cause except under the same procedures applicable to all other state boards of examination or registration set forth in section eight, article one, chapter thirty of this code. Other than as specifically set out herein, the board shall have no power or authority to impose or assess damages.

On or before the first day of January, two thousand one, the board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, which shall specify a procedure for the investigation and resolution of all complaints against persons licensed under this chapter.

CHAPTER 156

(H. B. 4801 — By Delegates Smirl, Givens, Coleman and Dalton)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]
Be it enacted by the Legislature of West Virginia:

That section eleven, article sixteen, 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 16. SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM.


(a) The director shall provide an application and application procedure for all permittees of solid waste landfills desiring to receive closure assistance under this article. At a minimum the procedure shall require that:

(1) The permittee of a landfill that does not have a liner system must submit its application no later than the fifteenth day of September, one thousand nine hundred ninety-two, except the permittee of a landfill that has been allowed to accept solid waste pursuant to the provisions of section seventeen, article fifteen of this chapter must submit its application no later than the eleven months following the expiration of the extension;

(2) The permittee of a landfill that has only a single liner system must submit its application no later than eleven months following the date of closure of the landfill; and

(3) The permittee of a landfill as provided for in subsection (g), section twelve, article sixteen of this chapter must submit its application for assistance on or before the last day of December, two thousand: Provided, That no landfill is eligible for closure assistance if any portion of the landfill remains open or application is made for reopening with the division of environmental protection or the public service commission.

(b) The director shall, within a reasonable time after receipt of a complete application, notify the applicant of the acceptance or rejection of the application. If the application is rejected the notice shall contain the reasons for the rejection.
AN ACT to amend and reenact section seven, article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article fourteen of said chapter by adding thereto a new section, designated section seventeen-e, all relating to compensating deputy sheriffs for required work during holidays.

Be it enacted by the Legislature of West Virginia:

That section seven, article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that article fourteen of said chapter be amended by adding thereto a new section, designated section seventeen-e, 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.


ARTICLE 7. TRAINING PROGRAMS FOR COUNTY EMPLOYEES, ETC.; COMPENSATION OF ELECTED COUNTY OFFICIALS; COUNTY ASSISTANTS, DEPUTIES AND EMPLOYEES, THEIR NUMBER AND COMPENSATION.

§7-7-7. County assistants, deputies and employees; their number and compensation; county budget.

1 The county clerk, circuit clerk, joint clerk of the county commission and circuit court, if any, sheriff, county assessor
and prosecuting attorney, by and with the advice and consent of
the county commission, may appoint and employ, to assist them
in the discharge of their official duties for and during their
respective terms of office, assistants, deputies and employees.
The county clerk may designate one or more of his or her
assistants as responsible for all probate matters.

The county clerk, circuit clerk, joint clerk of the county
commission and circuit court, if any, sheriff, county assessor
and prosecuting attorney shall, prior to the second day of March
of each year, file with the county commission a detailed request
for appropriations for anticipated or expected expenditures for
their respective offices, including the compensation for their
assistants, deputies and employees, for the ensuing fiscal year.

The county commission shall, prior to the twenty-ninth day
of March of each year by order fix the total amount of money
to be expended by the county for the ensuing fiscal year, which
amount shall include the compensation of county assistants,
deputies and employees. Each county commission shall enter its
order upon its county commission record.

The county clerk, circuit clerk, joint clerk of the county
commission and circuit court, if any, sheriff, county assessor
and prosecuting attorney shall then fix the compensation of
their assistants, deputies and employees based on the total
amount of money designated for expenditure by their respective
offices by the county commission and the amount expended
shall not exceed the total expenditure designated by the county
commission for each office.

The county officials, in fixing the individual compensation
of their assistants, deputies and employees and the county
commission in fixing the total amount of money to be expended
by the county, shall give due consideration to the duties,
responsibilities and work required of the assistants, deputies
and employees and their compensation shall be reasonable and
proper.
After the county commission has fixed the total amount of money to be expended by the county for the ensuing fiscal year and after each county official has fixed the compensation of each of his or her assistants, deputies and employees, as provided in this section, each county official shall file prior to the thirtieth day of June, with the clerk of the county commission, a budget statement for the ensuing fiscal year setting forth the name, or the position designation if then vacant, of each of his or her assistants, deputies and employees, the period of time for which each is employed, or to be employed if the position is then vacant, and his or her monthly or semimonthly compensation.

All budget statements required to be filed by this section shall be verified by an affidavit by the county official making them. Among other things contained in the affidavit shall be the statement that the amounts shown in the budget statement are the amounts actually paid or intended to be paid to the assistants, deputies and employees without rebate, and without any agreement, understanding or expectation that any part thereof shall be repaid to him or her, and that, prior to the time the affidavit is made, nothing has been paid or promised him or her on that account, and that if he or she shall thereafter receive any money, or thing of value, on account thereof, he or she will account for and pay the same to the county. Until the statements required by this section have been filed, no allowance or payments shall be made to any county official or their assistants, deputies and employees.

Each county official named in this section shall have the authority to discharge any of his or her assistants, deputies or employees by filing with the clerk of the county commission a discharge statement specifying the discharge action: Provided, That no deputy sheriff appointed pursuant to the provisions of article fourteen, chapter seven of this code, shall be discharged contrary to the provisions of that article.
ARTICLE 14. CIVIL SERVICE FOR DEPUTY SHERIFFS.

§7-14-17e. Deputy sheriffs who are required to work during holidays; how compensated.

From the effective date of this section, if any deputy sheriff is required to work during a legal holiday as specified in section one, article two, chapter two of this code, or if a legal holiday falls on the deputy sheriff's regular scheduled day off, the sheriff shall decide either that, the deputy sheriff shall be allowed equal time off at a time approved by the sheriff under whom the deputy sheriff serves, or in the alternative, shall be paid at a rate not less than one and one-half times the deputy sheriff's regular rate of pay.

CHAPTER 158

(H. B. 4129 — By Delegates Davis, Pettit, Stemple, Williams and Fletcher)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to sheriffs authorizing persons who were previously certified law-enforcement officers to carry deadly weapons in the duties of service of process for magistrate courts; and providing requirement of yearly weapons qualification and bonding by sheriff.

Be it enacted by the Legislature of West Virginia:

That section fourteen, article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 1. COURTS AND OFFICERS.

§50-1-14. Duties of sheriff; service of process; bailiff.

(a) It shall be the duty of each sheriff to execute all civil and criminal process from any magistrate court which may be directed to such sheriff. Process shall be served in the same manner as provided by law for process from circuit courts.

Subject to the supervision of the chief justice of the supreme court of appeals or of the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court, it shall be the duty of the sheriff, or his or her designated deputy, to serve as bailiff of a magistrate court upon the request of the magistrate. Such service shall also be subject to such administrative rules as may be promulgated by the supreme court of appeals. A writ of mandamus shall lie on behalf of a magistrate to enforce the provisions of this section.

(b) The sheriff of any county may employ, by and with the consent of the county commission, one or more persons whose sole duties shall be the service of civil process and the service of subpoenas and subpoenas duces tecum. Any such person shall not be considered a deputy or deputy sheriff within the meaning of subdivision (2), subsection (a), section two, article fourteen, chapter seven of this code, nor shall any such person be authorized to carry deadly weapons in the performance of his or her duties: Provided, That the sheriff may authorize previously certified West Virginia law-enforcement officers to carry a deadly weapon in the performance of the duties of the officers under the provisions of this section: Provided, however, That these officers maintain yearly weapons qualifications and are bonded through the office of the sheriff.
AN ACT to amend and reenact section six, article seven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to adding probation officers to the list of officials exempt from prohibitions against carrying deadly weapons.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-6. Exceptions as to prohibitions against carrying concealed deadly weapons.

The licensure provisions set forth in this article do not apply to:

(1) Any person carrying a deadly weapon upon his or her own premises; nor shall anything herein prevent a person from carrying any firearm, unloaded, from the place of purchase to his or her home, residence or place of business or to a place of repair and back to his or her home, residence or place of business, nor shall anything herein prohibit a person from possessing a firearm while hunting in a lawful manner or while traveling from his or her home, residence or place of business...
(2) Any person who is a member of a properly organized target-shooting club authorized by law to obtain firearms by purchase or requisition from this state, or from the United States for the purpose of target practice, from carrying any pistol, as defined in this article, unloaded, from his or her home, residence or place of business to a place of target practice and from any place of target practice back to his or her home, residence or place of business, for using any such weapon at a place of target practice in training and improving his or her skill in the use of the weapons;

(3) Any law-enforcement officer or law-enforcement official as defined in section one, article twenty-nine, chapter thirty of this code;

(4) Any employee of the West Virginia division of corrections duly appointed pursuant to the provisions of section five, article five, chapter twenty-eight of this code while the employee is on duty;

(5) Any member of the armed forces of the United States or the militia of this state while the member is on duty;

(6) Any circuit judge, including any retired circuit judge designated senior status by the supreme court of appeals of West Virginia, prosecuting attorney, assistant prosecuting attorney or a duly appointed investigator employed by a prosecuting attorney;

(7) Any probation officer appointed under the provisions of section five, article twelve, chapter sixty-two of this code;

(8) Any resident of another state who has been issued a license to carry a concealed weapon by a state or a political subdivision which has entered into a reciprocity agreement with
this state shall be exempt from the licensing requirements of
section four of this article. The governor may execute reciproc-
ity agreements on behalf of the state of West Virginia with
states or political subdivisions which have similar gun permit-
ting laws and which recognize and honor West Virginia licenses
issued pursuant to section four of this article.

CHAPTER 160

(Com. Sub. for S. B. 235 — By Senators Ross,
Anderson, Minard, Snyder, Unger and Minear)

[Passed March 11, 2000; in effect from passage. Approved by the Governor.]
auditor to promulgate a legislative rule relating to purchasing card program; authorizing the division of personnel to promulgate a legislative rule relating to the administration of the division; authorizing the division of personnel to promulgate a legislative rule relating to workers' compensation temporary total disability; authorizing the consolidated public retirement board to promulgate a legislative rule relating to general provisions; authorizing the consolidated public retirement board to promulgate a legislative rule relating to the teachers’ defined contribution system; authorizing the consolidated public retirement board to promulgate a legislative rule relating to the teachers defined benefit plan; authorizing the consolidated public retirement board to promulgate a legislative rule relating to the public employees retirement system; authorizing the consolidated public retirement board to promulgate a legislative rule relating to refund, reinstatement and loan interest factors; and authorizing the board of risk and insurance management to promulgate a legislative rule relating to the filing of written notification concerning incidents which could potentially result in liability to the board.

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 article two of said chapter be amended and reenacted, all to read as follows:

Article
2. Authorization for Department of Administration to Promulgate Legislative Rules.

ARTICLE 1. GENERAL LEGISLATIVE AUTHORIZATION.

§64-1-1. Legislative authorization.

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

All proposed legislative rules for which bills of authoriza-
tion have been introduced in the Legislature not specifically
authorized under articles two through eleven of this chapter are
disapproved by the Legislature.

ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF ADMINISTRA-
TION TO PROMULGATE LEGISLATIVE RULES.

§ 64-2-1. Department of Administration and the Auditor.
§ 64-2-2. Division of personnel.
§ 64-2-4. Board of risk and insurance management.

§ 64-2-1. Department of Administration and the Auditor.

The legislative rule filed in the state register on the first day
of November, one thousand nine hundred ninety-nine, under the
authority of section ten-a, article three, chapter twelve of this
code, modified by the department of administration and the
auditor to meet the objections of the legislative rule-making
review committee and refiled in the state register on the
twentieth day of December, one thousand nine hundred ninety-
ine, relating to the department of administration and the
auditor (state purchasing card program, 148 CSR 7), is autho-
rized.
§64-2-2. Division of personnel.

(a) The legislative rule filed in the state register on the sixth day of August, one thousand nine hundred ninety-nine, under the authority of section ten, article six, chapter twenty-nine of this code, modified by the division of personnel to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of October, one thousand nine hundred ninety-nine, relating to the division of personnel (administrative rule of the West Virginia division of personnel, 143 CSR 1), is authorized with the following amendment:

On page eight, subdivision 4.4(b), line two, following the words ‘whole. The’, by striking out the word ‘Board’ and inserting in lieu thereof the word ‘Director’.

(b) The legislative rule filed in the state register on the sixth day of August, one thousand nine hundred ninety-nine, under the authority of section four, article five-a, chapter twenty-three of this code, modified by the division of personnel to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of October, one thousand nine hundred ninety-nine, relating to the division of personnel (workers’ compensation temporary total disability, 143 CSR 3), is authorized.


(a) The legislative rule filed in the state register on the twenty-second day of July, one thousand nine hundred ninety-nine, under the authority of section one, article ten-d, chapter five of this code, modified by the consolidated public retirement board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of October, one thousand nine
hundred ninety-nine, relating to the consolidated public retirement board (general provisions, 162 CSR 1), is authorized.

(b) The legislative rule filed in the state register on the twenty-second day of July, one thousand nine hundred ninety-nine, under the authority of section one, article ten-d, chapter five of this code, modified by the consolidated public retirement board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of October, one thousand nine hundred ninety-nine, relating to the consolidated public retirement board (teachers' defined contribution system, 162 CSR 3), is authorized.

(c) The legislative rule filed in the state register on the twenty-second day of July, one thousand nine hundred ninety-nine, under the authority of section one, article ten-d, chapter five of this code, modified by the consolidated public retirement board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of October, one thousand nine hundred ninety-nine, relating to the consolidated public retirement board (teachers defined benefit plan, 162 CSR 4), is authorized.

(d) The legislative rule filed in the state register on the twenty-second day of July, one thousand nine hundred ninety-nine, under the authority of section one, article ten-d, chapter five of this code, modified by the consolidated public retirement board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of October, one thousand nine hundred ninety-nine, relating to the consolidated public retirement board (public employees retirement system, 162 CSR 5), is authorized.
(e) The legislative rule filed in the state register on the third day of August, one thousand nine hundred ninety-nine, under the authority of section one, article ten-d, chapter five of this code, modified by the consolidated public retirement board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of October, one thousand nine hundred ninety-nine, relating to the consolidated public retirement board (refund, reinstate-
ment and loan interest factors, 162 CSR 7), is authorized.

§64-2-4. Board of risk and insurance management.

The legislative rule filed in the state register on the thir-
teenth day of May, one thousand nine hundred ninety-nine, under the authority of section five, article twelve, chapter twenty-nine of this code, modified by the board of risk and insurance management to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of July, one thousand nine hundred ninety-nine, relating to the board of risk and insurance manage-
ment (filing of written notification concerning incidents which could potentially result in liability to the board, 115 CSR 5), is authorized.

CHAPTER 161

(Com. Sub. for H. B. 4223 — By Delegates Hunt, Linch, Compton, Jenkins, Faircloth and Riggs)

[Passed March 11, 2000; 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 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 certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; disapproving certain legislative rules; authorizing the division of environmental protection to promulgate a legislative rule relating to the prevention and control of air pollution from the emission of sulfur oxides; authorizing the division of environmental protection to promulgate a legislative rule relating to the ambient air quality standard for nitrogen dioxide; authorizing the division of environmental protection to promulgate a legislative rule relating to permits for construction, modification, relocation and operation of stationary sources of air pollutants, notification requirements, administrative updates, temporary permits, general permits and procedures for evaluation; 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 particulate matter air pollution from materials handling, preparation, storage and other sources of fugitive particulate matter; authorizing the division of environmental protection to promulgate a legislative rule relating to the prevention and control of particulate air pollution from direct meat-firing devices; authorizing the division of environmental protection to
promulgate a legislative rule relating to the prevention and control of particulate air pollution from the combustion of fuel in indirect heat exchangers; authorizing the division of environmental protection to promulgate a legislative rule relating to the prevention and control of emissions from municipal solid waste landfills; authorizing the division of environmental protection to promulgate a legislative rule relating to the prevention and control of emissions from hospital/medical/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 air pollutant emissions banking and trading; authorizing the division of environmental protection to promulgate a legislative rule relating to the prevention and control of air pollution from the operation of hot mix asphalt plants; 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 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 prevention and control of air pollution from the operation of coal preparation plants, coal handling operations and coal refuse disposal areas; authorizing the division of environmental protection to promulgate a legislative rule relating to the prevention and control of air pollution from the combustion of refuse; authorizing the division of environmental protection to promulgate a legislative rule relating to the prevention and control of particulate matter air pollution from manufacturing processes and associated operations; 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 ambient air quality standards for carbon monoxide and ozone; authorizing the division of environmental protection to promulgate a legislative rule relating to surface mining blasting; authorizing the division of environmental protection to promulgate a legislative rule relating to surface mining and reclamation; disallowing and not authorizing the division of environmental protection to promulgate a legislative rule relating to mining and restoration for sandstone, limestone and sand; disallowing and not authorizing the division of environmental protection to promulgate a legislative rule relating to mining and reclamation of minerals other than coal, limestone, sandstone and sand; 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 a water pollution control permit fee schedule; authorizing the division of environmental protection to promulgate a legislative rule relating to the state water pollution control revolving fund program; authorizing the division of environmental protection to promulgate a rule relating to water pollution control permit fee schedule; authorizing the division of environmental protection to promulgate a legislative rule relating to groundwater protection standards at steam electric generating facilities; repealing a legislative rule relating to preventing and controlling air pollution from coal refuse disposal areas; and authorizing the environmental quality board to promulgate a legislative rule relating to 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.

(a) The legislative rule filed in the state register on the sixth day of August, one thousand nine hundred ninety-nine, authorized under the authority of section four, article five, chapter twenty-two of this code, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-sixth day of October, one thousand nine hundred ninety-nine, relating to the division of environmental protection (to prevent and control air pollution from the emission of sulfur oxides, 45 CSR 10), is authorized with the following amendments:

On page nine, paragraph 8.2.c.3., after the word "Director" by striking out the remainder of the sentence;

On page nine, subdivision 8.3.a., in the last sentence, by striking out the word "two" and inserting in lieu thereof the word "five";

On page nine, subdivision 8.3.b., after the words "by the Director" by striking out the remainder of the sentence;

On page nine, subdivision 8.3.c., after the words "by the Director" by striking out the remainder of the sentence;

And;

On page nine, by striking out subdivision 8.3.e in its entirety and inserting in lieu thereof a new subdivision 8.3.e to read as follows:
8.3.e.1. The Director shall respond within five working days to requests for information generated or required under this rule. Requests for information not in the Director’s custody shall be promptly forwarded to the appropriate federal or state agency known to have such information.

8.3.e.2. Data regarding the compliance reporting of electric utility SO2 emissions is available from the U.S. Environmental Protection Agency (EPA). Requests for EPA emissions data should be sent to: EPA Clean Air Marketing Division, 501 3rd Street NW, Washington, D.C. 20001 or online at http://www.epa.gov/acidrain/edata.html. Data relating to fuel quality and costs of fuels are available at the Federal Energy Regulatory Commission (FERC) and the West Virginia Public Service Commission. Requests for FERC data should be sent to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, D.C. 20426 or online at http://www.ferc.fed.us/electric/f423/form423.htm. Requests for PSC data should be sent to: The West Virginia Public Service Commission, Utility Division, P.O. Box 812, Charleston, W. Va. 25323-0812.

(b) The legislative rule filed in the state register on the fifth day of August, one thousand nine hundred ninety-nine, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the division of environmental protection (ambient air quality standard for nitrogen dioxide, 45 CSR 12), is authorized.

(c) The legislative rule filed in the state register on the seventeenth day of December, one thousand nine hundred ninety-nine, authorized under the authority of section four, article five, chapter twenty-two of this code, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of January, two thousand, relating to the division of environmental protection (permits for
construction, modification, relocation and operation of stationary sources of air pollutants, notification requirements, administrative updates, temporary permits, general permits and procedures for evaluation, 45 CSR 13), is authorized with the following amendments:

On page 5, paragraph 2.17.f.6, by striking out the words "Upon written request, the Director may determine that a physical change results in";

And,

On page 5, paragraph 2.17.f.6, at the end of the paragraph, by changing the period to a colon and inserting the words "provided that the owner or operator of the source shall notify the Director of such replacement and the emissions reduction within ten (10) working days of the replacement."

(d) The legislative rule filed in the state register on the fifth day of August, one thousand nine hundred ninety-nine, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the division of environmental protection (standards of performance for new stationary sources, 45 CSR 16), is authorized.

(e) The legislative rule filed in the state register on the sixth day of August, one thousand nine hundred ninety-nine, authorized under the authority of section four, article five, chapter twenty-two of this code, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of September, one thousand nine hundred ninety-nine, relating to the division of environmental protection (to prevent and control particulate matter air pollution from materials handling, preparation, storage and other sources of fugitive particulate matter, 45 CSR 17), is authorized.
(f) The legislative rule filed in the state register on the fifth day of August, one thousand nine hundred ninety-nine, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the division of environmental protection (to prevent and control particulate air pollution from direct meat-firing devices, 45 CSR 18), is authorized.

(g) The legislative rule filed in the state register on the sixth day of August, one thousand nine hundred ninety-nine, authorized under the authority of section four, article five, chapter twenty-two of this code, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of August, one thousand nine hundred ninety-nine, relating to the division of environmental protection (to prevent and control particulate air pollution from combustion of fuel in indirect heat exchangers, 45 CSR 2), is authorized with the following amendments:

On page seven, subdivision 8.1.a., in the last sentence, after the words "by the Director" by striking out the remainder of the sentence;

On page eight, subdivision 8.3.a, by adding a new sentence at the end of the subdivision to read as follows: Such records shall be retained on-site for a minimum of five years.;

On page eight, subdivision 8.3.b, in the first sentence, after the words "by the Director" by striking out the remainder of the sentence;

On page eight, subdivision 8.3.c, in the first sentence, after the words "by the Director" by striking out the remainder of the sentence;

On page eight, subdivision 8.4.c., after the word "subsection" by striking out the number "8.4" and inserting in lieu thereof the number "8.2";
And;

On page nine, by striking out subsection 8.5. in its entirety and inserting in lieu thereof a new subsection 8.5. to read as follows:

8.5.a. The Director shall respond within five working days to requests for information generated or required under this rule. Requests for information not in the Director’s custody shall be promptly forwarded to the appropriate federal or state agency known to have such information.

8.5.b. Data relating to electric utilities and fuel quality and costs of fuels are available from the Federal Energy Regulatory Commission (FERC) and the West Virginia Public Service Commission (PSC). Requests for FERC data should be sent to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, D.C. 20426 or online at http://www.ferc.fed.us/electric/f423/form423.htm. Requests for PSC data should be sent to: The West Virginia Public Service Commission, Utility Division, P.O. Box 812, Charleston, W. Va. 25323-0812.

(h) The legislative rule filed in the state register on the sixth day of August, one thousand nine hundred ninety-nine, authorized under the authority of section four, article five, chapter twenty-two of this code, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-sixth day of October, one thousand nine hundred ninety-nine, relating to the division of environmental protection (to prevent and control emissions from municipal solid waste landfills, 45 CSR 23), is authorized.

(i) The legislative ruled filed in the state register on the twenty-second day of December, one thousand nine hundred ninety-nine, authorized under the authority of section four,
article five, chapter twenty-two of this code, relating to the division of environmental protection (to prevent and control emissions from hospital, medical, and infectious waste incinerators, 45 CSR 24), is authorized.

(j) The legislative rule filed in the state register on the fifth day of August, one thousand nine hundred ninety-nine, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the division of environmental protection (to prevent and control air pollution from hazardous waste treatment, storage or disposal facilities, 45 CSR 25), is authorized.

(k) The legislative rule filed in the state register on the first day of February, one thousand nine hundred ninety-nine, authorized under the authority of section eighteen, article five, chapter twenty-two of this code, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of January, two thousand, relating to the division of environmental protection (air pollutant emissions banking and trading, 45 CSR 28), is authorized.

(l) The legislative rule filed in the state register on the sixth day of August, one thousand nine hundred ninety-nine, authorized under the authority of section four, article five, chapter twenty-two of this code, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of August, one thousand nine hundred ninety-nine, relating to the division of environmental protection (to prevent and control air pollution from the operation of hot mix asphalt plants, 45 CSR 3), is authorized.

(m) The legislative rule filed in the state register on the fifth day of August, one thousand nine hundred ninety-nine, autho-
188  rized under the authority of section four, article five, chapter
189  twenty-two of this code, relating to the division of environmen-
190  tal protection (acid rain provisions and permits, 45 CSR 33), is
191  authorized.

192  (n) The legislative rule filed in the state register on the fifth
193  day of August, one thousand nine hundred ninety-nine, autho-
194  rized under the authority of section four, article five, chapter
195  twenty-two of this code, relating to the division of environmen-
196  tal protection (emission standards for hazardous air pollutants
197  pursuant to 40 CFR Part 63, 45 CSR 34), is authorized.

198  (o) The legislative rule filed in the state register on the sixth
199  day of August, one thousand nine hundred ninety-nine, autho-
200  rized under the authority of section four, article five, chapter
201  twenty-two of this code, modified by the division of environ-
202  mental protection to meet the objections of the legislative
203  rule-making review committee and refiled in the state register
204  on the twenty-fourth day of September, one thousand nine
205  hundred ninety-nine, relating to the division of environmental
206  protection (to prevent and control air pollution from the
207  operation of coal preparation plants, coal handling operations
208  and coal refuse disposal areas, 45 CSR 5), is authorized.

209  (p) The legislative rule filed in the state register on the sixth
210  day of August, one thousand nine hundred ninety-nine, autho-
211  rized under the authority of section four, article five, chapter
212  twenty-two of this code, relating to the division of environmen-
213  tal protection (to prevent and control air pollution from com-
214  bustion of refuse, 45 CSR 6), is authorized.

215  (q) The legislative rule filed in the state register on the sixth
216  day of August, one thousand nine hundred ninety-nine, autho-
217  rized under the authority of section four, article five, chapter
218  twenty-two of this code, modified by the division of environ-
219  mental protection to meet the objections of the legislative
220  rule-making review committee and refiled in the state register
on the twenty-fourth day of September, one thousand nine
hundred ninety-nine, relating to the division of environmental
protection (to prevent and control particulate matter air pollu-
tion from manufacturing processes and associated operations,
45 CSR 7), is authorized.

(r) The legislative rule filed in the state register on the
twenty-second day of December, one thousand nine hundred
ninety-nine, authorized under the authority of section four,
article twenty-two of this code, modified by the
division of environmental protection to meet the objections of
the legislative rule-making review committee and refiled in the
state register on the twenty-fifth day of January, two thousand,
relating to the division of environmental protection (ambient air
quality standards for sulfur oxides and particulate matter, 45
CSR 8), is authorized.

(s) The legislative rule filed in the state register on the
twenty-second day of December, one thousand nine hundred
ninety-nine, authorized under the authority of section four,
article five, chapter twenty-two of this code, modified by the
division of environmental protection to meet the objections of
the legislative rule-making review committee and refiled in the
state register on the twenty-fifth day of January, two thousand,
relating to the division of environmental protection (ambient air
quality standards for carbon monoxide and ozone, 45 CSR 9),
is authorized.

(t) The legislative rule filed in the state register on the
twenty-fourth day of September, one thousand nine hundred
ninety-nine, authorized under the authority of section three,
article three-a, chapter twenty-two of this code, modified by the
division of environmental protection to meet the objections of
the legislative rule-making review committee and refiled in the
state register on the twenty-first day of January, two thousand,
relating to the division of environmental protection (surface
mining blasting, 199 CSR 1), is authorized.
(u) The legislative rule filed in the state register on the thirtieth day of July, one thousand nine hundred ninety-nine, authorized under the authority of section three, article one, chapter twenty-two of this code, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first of January, two thousand, relating to the division of environmental protection (surface mining and reclamation rule, 38 CSR 2), is authorized with the following amendments:

On page 4, by inserting a new subsection 2.31 to read as follows:

2.31. Commercial Forestry And Forestry.

2.31.a. Commercial Forestry, as used in Subsection 7.4 of this rule, means a long-term postmining land use designed to accomplish the following: (1) Achieve greater forest productivity than that found on the mine site before mining; (2) Minimize erosion and/or sediment yield and serve the hydrologic functions of infiltrating, holding, and yielding water commonly found in undisturbed forests; (3) Result in biodiversity by facilitating rapid recruitment of native species of plants and animals via the process of natural succession; (4) Result in a premium forest that will thrive under stressful conditions; and (5) Result in landscape, vegetation and water resources that create habitat for forest-dwelling wildlife.

2.31.b. Forestry, as used in Subsection 7.4 of this rule, means a long-term postmining land use designed to accomplish the following: (1) Achieve forest productivity equal to that found on the mine site before mining; (2) Minimize erosion and/or sediment yield and serve the hydrologic functions of infiltrating, holding, and yielding water commonly found in undisturbed forests; (3) Result in biodiversity by facilitating rapid recruitment of native species of plants and animals via the process of natural succession; (4) Result in a premium forest that will thrive under stressful conditions; and (5) Result in landscape, vegetation and water resources that create habitat for forest-dwelling wildlife.
process of natural succession; and (4) Result in landscape, vegetation and water resources that create habitat for forest-dwelling wildlife.”

and renumber the subsequent subsections;

On page twelve, by striking subsection 2.136, the definition of ‘woodlands’ in its entirety and renumber the subsequent subsections;

On page 68, section 7.2.i, by striking the word ‘Woodland’ and inserting in lieu thereof the word ‘Forestry.’

On page 68, following section 7.3.c., by inserting the following:

‘7.3.c. A change in postmining land use to grassland uses such as rangeland and/or hayland or pasture is prohibited on operations that obtain an approximate original contour variance described in WV Code §22-3-13(b)(25)(c). Provided, however, that this subdivision is not effective until Sections 7.4 and 7.5 of this rule are approved by the federal Office of Surface Mining.

7.4. Standards Applicable to Approximate Original Contour Variance Operations With a Postmining Land Use of Commercial Forestry and Forestry.

7.4.a. Applicability.

7.4.a.1. Commercial Forestry and forestry may be approved as a post mining land use for surface mining operations that receive variances from the general requirement to restore the postmining site to its approximate original contour. An applicant may request AOC variance for purposes of this section for the entire permit area or any segment thereof. Either commercial forestry or forestry shall be established on all
317 portions of the permit area. Provided, that the faces of valley fills shall be reclaimed as described in 7.4.b.1.J of this rule.

319 7.4.b. Requirements.

320 7.4.b.1. The Director may authorize commercial forestry and forestry as a postmining use only if the following conditions have been satisfied.

323 7.4.b.1.A. Planting and Management Plan Development.

325 7.4.b.1.A.1. A registered professional forester shall develop a planting plan and long-term management plan for the permitted area that meets the requirements of the West Virginia Surface Coal Mining and Reclamation Act. These plans shall be made a part of the surface mining permit application and shall be the basis for determining the capability of the applicant to meet the requirements of this rule. The plans shall be in sufficient detail to demonstrate that the requirements of the commercial forestry and forestry uses can be met. The plans shall contain a signed statement of intent from the landowner demonstrating its commitment to long-term implementation and management in accordance with the plan. Once final bond release is authorized, the permittee’s responsibility for implementing the long-term management plan ceases. Upon final bond release, the jurisdiction of the Director over the permittee, the operator, the landowner or any other responsible party shall cease. The minimum required content of these plans shall be as follows:

343 7.4.b.1.A.2. The landowner or other responsible party shall submit their objectives for achieving commercial forestry and forestry postmining land uses. The Director may approve the uses only when the planting plan and long term management plan demonstrate that the forest will be managed
only for long term forest products, such as sawlogs or veneer, that take 50 to 80 years to mature.

7.4.b.1.A.3. A commercial species planting plan and prescription shall be developed by the registered professional forester to achieve the commercial forestry and forestry use. The plan shall include the following:

(a) A topographic map of the permit area, 1:12000 or finer, showing the mapped location of premining native soil. A description of each soil mapping unit that includes, at minimum, total depth and volume to bedrock, soil horizons, including the O, A, E, B, C, and Cr horizon depths, soil texture, structure, color, reaction and bedrock type and a site index for common native tree species. An approved certified professional soil scientist shall conduct a detailed on-site survey, create the maps, and provide the written description of the soils. As part of the field survey, the soil scientist shall map and certify the slopes that are 50% or less with a confidence level of ± 2%.

(b) An approved geologist shall create a certified geology map showing the location, depth, and volume of all strata in the mined area, the physical and chemical properties of each stratum to include rock texture, pH, potential acidity and alkalinity, total soluble salts, degree of weathering, extractable levels of phosphorus, potassium, calcium, magnesium, manganese, and iron and other properties required by the director to select best available materials for minesoils.

(c) A description of the present soils and soil substitutes to be used as the plant medium and the proposed handling, and placement of these materials. The handling plan shall include procedures to:
7.4.b.1.A.3.(c)(1) protect native soil organisms and the native seed pool;
7.4.b.1.A.3.(c)(2) include organic debris such as litter, branches, small logs, roots, and stumps in the soil;
7.4.b.1.A.3.(c)(3) inoculate the mine soil with native soil organisms;
7.4.b.1.A.3.(c)(4) increase soil fertility; and
7.4.b.1.A.3.(c)(5) encourage plant succession.
7.4.b.1.A.3.(d) A surface preparation plan which includes a description of the methods for replacing and grading the soil and other soil substitutes and their preparation for seeding and tree planting.
7.4.b.1.A.3.(e) Liming and fertilization plans.
7.4.b.1.A.3.(f) Mulching type, rates and procedures.
7.4.b.1.A.3.(g) Species seeding rates and procedures for application of perennial and annual herbaceous, shrub, and vine plant materials for ground cover.
7.4.b.1.A.3.(h) A tree planting prescription to establish commercial forestry and forestry, to include species, stems per acre, planting mixes, and site-specific planting arrangements to maximize productivity.
7.4.b.1.A.4. A long-term management plan shall be developed by a registered professional forester. The plan shall include:
7.4.b.1.A.4.(a) A topographic map, with a minimum scale of 1:12000 shall be used to show the boundaries and extent of the proposed surface mining operation, the
boundaries of areas being planned for commercial forestry and
forestry land uses, and the proposed postmining surface
configuration, stream drainages and wetlands, and the plant
species mix that will be planted in each area.

7.4.b.1.A.4.(b) A proposed schedule of all
silvicultural activities necessary to develop the forest resources
for commercial forestry and forestry.

7.4.b.1.A.4.(c) A description of activities
necessary to protect the forest resources from vandalism,
wildfire, insects, diseases, exotic organisms and herbivory
detrimental to long-term success.

7.4.b.1.A.4.(d) A plan to assure forest access for
future management, protection, and eventual utilization of the
forest resources. The plan shall be developed to minimize
adverse environmental impacts, including additional road
building and other land disturbances. Forestry best management
practices shall be followed.

7.4.b.1.A.4.(e) A plan for using forestry best
management practices to minimize silvicultural and harvesting
impacts on the permit area and on waters of the State. Best
Management Practices shall be sufficient to assure compliance
with applicable State and Federal water quality standards.

7.4.b.1.A.5. A signed statement from the permittee
containing financial information and data sufficient to demon-
strate:

7.4.b.1.A.5.(a) That achieving the commercial
forestry use is practicable with respect to the private financial
capability necessary to achieve the use; and

7.4.b.1.A.5.(b) That the commercial forestry use
will be obtainable according to data regarding expected need
and market.
7.4.b.1.A.6. Two copies of the planting plan, management plan, pertinent maps and statement of intent shall be submitted to the appropriate Division of Forestry District Forester and two copies of each plan shall be submitted to the Director of the Division of Environmental Protection.

7.4.b.1.B. Oversight Procedures for Achieving Commercial Forestry and Forestry.

7.4.b.1.B.1. Before approving a commercial forestry and forestry reclamation plan, the Director shall assure that the planting plan, long-term management plan, and statement of intent are reviewed and approved by a registered professional forester employed either by the West Virginia Division of Forestry or the Director of the Division of Environmental Protection and that a certified professional soil scientist employed by the Director reviews and field verifies the soil slope and sandstone mapping. Before approving the reclamation plan, the Director shall assure that the reviewing forester has made site-specific written findings adequately addressing each of the elements of the plans and statements. The reviewing forester and soil scientist shall make these findings within 45 days of receipt of the plans and maps.

7.4.b.1.B.2. If after reviewing the plans, the reviewing forester and soil scientist find that the plans and statements comply with the requirements of this land use, they shall prepare written findings stating the basis of approval. A copy of the findings shall be sent to the Director and to the surface mining permit supervisor for the region in which the permit is located. The written findings shall be made part of the facts and findings section of the surface mining permit application file. The Director shall assure that the plans and statements comply with the requirements of this rule and other provisions of the approved State surface mining program.
7.4.b.1.B.3. If the reviewing forester finds the plans to be insufficient, the forester shall either:

7.4.b.1.B.3.(a) Contact the preparing forester or the permittee and provide the permittee with an opportunity to make the changes necessary to bring the reclamation plan into compliance with the regulations, or

7.4.b.1.B.3.(b) Notify the Director that the reclamation plan does not meet the requirements of the regulations. The Director may not approve the surface mining permit until finding that the reclamation plans satisfy all of the requirements of the regulations.

7.4.b.1.C. Landscape Criteria.

7.4.b.1.C.1. For commercial forestry, the Director shall assure that the postmining landscape is rolling, and diverse. The backfill on the mine bench shall be configured to create a postmining topography that includes the principles of landforming (e.g. the creation of swales) to reflect the premining irregularities in the land. Postmining landform shall provide a rolling topography with slopes of both 5% and 15% with an average slope of 10% to 12.5%. The elevation change between the ridgeline and the valleys shall be varied. The slope lengths shall not exceed 500 feet. The minimum thickness of backfill, including minesoil, placed on the pavement of the basal seam mined in any particular area shall be ten (10) feet.

7.4.b.1.C.2. For commercial forestry, the surface drainage pattern shall contain watersheds of various sizes shall exhibit a dendritic drainage pattern that simulates the premining pattern, and shall include the drainage channels, sediment control or other water retention surfaces, which shall remain on the site after bond release.

7.4.b.1.C.3. For commercial forestry, in areas where drainage channel design criteria do not mandate erosion
control materials, and in other drainage areas where applicable, bioengineering techniques such as fascines, branch packings, live crib walls, and plantings of native herbs and shrubs appropriate for the site shall be used, to the extent possible, to increase the site biodiversity. Only native stone shall be used for erosion control.

7.4.b.1.C.4. For commercial forestry, at least 3 ponds, permanent impoundments or wetlands totaling at least 3.0 acres shall be created on each 200 acres of permitted area. They shall be dispersed throughout the landscape and each water body shall be no smaller than 0.20 acres. All ponds, permanent impoundments or wetlands shall be subject to the requirements of subsection 5.5 of this rule, and shall be left in place after final bond release. The substrate of the ponds and wetlands must be capable of retaining water to support aquatic and littoral vegetation.

7.4.b.1.C.5. For forestry, all ponds and impoundments created during mining shall be left in place after bond release and shall be subject to the requirements of section 5.5 of the Rules, except for ponds and impoundments located below the valley fills. The substrate of the ponds and wetlands must be capable of retaining water to support aquatic and littoral vegetation.

7.4.b.1.C.6. Before Phase III bond release may be approved, the ponds, permanent impoundments or wetlands used to satisfy parts 7.4.d.1.C.4. and 5. of this rule shall be vegetated on the perimeter with at least six native herbaceous species typical of the region at a density of not less than 1 plant per linear foot of edge, and at least 4 native shrub species at a density of not less than 1 shrub per 6 linear feet of edge. No species of herbaceous or shrub species shall be less than 15% of the total for its life form. This requirement may be met by planted vegetation or that which naturally colonizes the site.
7.4.b.1.C.7. The landscape criteria in parts 7.4.d.1.C.1, 2., 3., 4., 5., and 6. above, do not apply to valley fills.

7.4.b.1.D. Soil and Soil Substitutes.

7.4.b.1.D.1. Soil is defined as and shall consist of the O, A, E, B, C and Cr horizons.

7.4.b.1.D.2. The Director shall require the operator to recover and use the soil volume equal to the total soil volume on the mined area, as shown on the soil maps and survey except for those areas with a slope of at least 50%. The Director shall assure that all saved soil includes all of the material from the O through Cr horizons.

7.4.b.1.D.3. When the soil volume recovered in 7.4.b.1.D.2. above, is insufficient to meet the depth requirements, selected overburden materials may be used as soil substitutes. In such cases, the Director shall require the operator to recover and use all of the weathered, slightly acid brown sandstone from within ten (10) feet of the soil surface on the mined area. This weathered, slightly acid, brown sandstone material may contain or be supplemented with up to 25% by-volume weathered, slightly acid brown shale or siltstone from within ten (10) feet of the soil surface. Material from this layer may be removed with the soil and mixed with the soil in order to meet the depth requirement. Provided, that once the operator has recovered material sufficient to meet the depth requirements, it may cease recovering such material.

7.4.b.1.D.4. When the materials described in 7.4.b.1.D.2. and 3. of this rule are insufficient to meet the depth requirements, then the Director shall require the operator to recover and use all of the weathered, slightly acid, brown sandstone from below ten feet of the soil surface on the mined area. Provided, that once the operator has recovered material
sufficient to meet the depth requirements, it may cease recovering such material.

7.4.b.1.D.5. If the applicant affirmatively demonstrates that the materials described in 7.4.b.1.D.2., 3., and 4. of this rule within the mined area are insufficient to meet the depth requirements, then up to 2/3 of the minesoil may consist of the best available material or mix of materials.

7.4.b.1.D.6. Before approving the use of soil substitutes, the Director shall require the permittee to demonstrate that the selected overburden material is suitable for restoring land capability and productivity. This will be demonstrated by the results of chemical and physical analyses that show that this material is at least 75% sandstone, has at least 15% fines (<2mm), has a net acid-base accounting between -3 and +3 calcium carbonate equivalent per 1000 tons of material excluding siderite effects, a soluble salt level less than 1.0 mmhos/cm, to result in a long-term equilibrium pH of between 5.0 and 6.5 and additional analyses as the Director deems necessary. If this spoil is made up of strongly contrasting materials with respect to acid/base accounting these materials shall be blended.

7.4.b.1.D.7. The minesoils shall be distributed across the disturbed areas, except the faces of valley fills, in a uniform and consistent mix.

7.4.b.1.D.8. For commercial forestry, the final surface material used as the planting and growth medium (hereinafter referred to as commercial forestry minesoil) shall consist of a minimum of four feet, and an average of at least five feet, of soil or a mixture of materials consisting of no less than one-third soil and two-thirds of the materials described in 7.4.b.1.D.3. and 4. of this rule.
7.4.b.1.D.9. For forestry, the final surface material used as the planting and growth medium (forestry minesoil) shall consist of a minimum of 4 feet of soil, or a mixture of soil and suitable soil substitutes described in 7.4.b.1.D.4 through 6 of this rule.

7.4.b.1.D.10. Commercial forestry minesoil shall be placed on that portion of the mined area which receives an AOC variance. For a proposed mine permit area or any specifically defined segment of the proposed permit area that does not satisfy the volumetric criteria for AOC, an AOC variance shall be required. In order to define the portion of the permit classified as AOC-compliant or AOC-variant, the permit may be divided into segments. The number of segments shall not exceed the number of excess spoil disposal areas proposed and each segment shall include at least one associated fill. In no event will there be more variance segments than there are excess spoil disposal areas on the permit area. For each segment, the AOC status shall be defined as complying with AOC if that segment meets the backfill volume, valley fill design, backfill inflection point tests and other criteria as described in the AOC policy adopted by the Director.

7.4.b.1.D.11. Forestry minesoil shall, at a minimum, be placed on all areas achieving AOC.

7.4.b.1.D.12. If the applicant does not demonstrate that there is sufficient material available on the permit area to satisfy the requirements of 7.4.d.1.D., then the Director may not authorize this post mining land use.

7.4.b.1.D.13. The Director shall require the operator to include, as part of the commercial forestry and forestry minesoil mix, organic debris such as forest litter, branches, small logs, roots and stumps in the soil to help reseed and respout the native vegetation, inoculate the minesoil
630 with native soil organisms, increase soil fertility, and encourage
631 plant succession.

7.4.b.1.D.14. The Director shall require that soil be
632 removed and re-applied in a manner that minimizes stockpiling
633 to protect seed pools and soil organisms. Only soil removed
634 from the mined area during the one-year period immediately
635 following commencement of soil removal may be placed in a
636 long-term stockpile. Except for soil in a long-term stockpile,
637 soil redistribution shall be done within six months of soil
638 removal. Except for soil in a long-term stockpile, soil shall be
639 stored for less than six months in piles less than six feet high
640 and 24 feet wide in a stable area within the permit area where
641 it will not be disturbed and will be protected from water or wind
642 erosion or contaminants that lessen its capability to support
643 vegetation. Long-term stockpiles shall be seeded with the
644 legumes specified in the ground cover mixes used for reforesta-
645 tion (7.4.d.1.G.1. of this rule).

7.4.b.1.E. Soil Placement and Grading.

7.4.b.1.E.1. The Director shall require the
648 permittee to place minesoil loosely and in a non-compacted
649 manner while meeting static safety factor requirements.
650 Minesoil shall be graded only when necessary to maintain
651 stability or on slopes greater than 20% unless otherwise
652 approved by the Director. Grading shall be minimized to reduce
653 compaction. When grading is approved by the Director, only
654 light grading equipment may be used to grade the tops off the
655 piles, roughly leveling the area with no more than one or two
656 passes. Tracking in and rubber-tired equipment shall not be
657 used. Non-permanent roads, equipment yards, and other
658 trafficked areas shall be deep-ripped (24" to 36") to mitigate
659 compaction and to allow these areas to be restored to productive
660 commercial forestry. Soil physical quality shall be inadequate
661 if it inhibits water infiltration or prevents root penetration or if
662 their physical properties or water-supplying capacities cause
them to restrict root growth of trees common to the area. Slopes
greater than 50% shall be compacted no more than is necessary
to achieve stability and non-erodability.

7.4.b.1.E.2. The Director shall require the
permittee to leave soil surfaces rough with random depressions
across the entire surface to catch seed and sediment, conserve
soil water, and promote revegetation. Organic debris such as
forest litter, logs, and stumps shall be left on and in the soil.

7.4.b.1.F. Liming and Fertilizing.

7.4.b.1.F.1. The Director shall require the
permittee to apply lime where the average soil pH is less than
5.5. Lime rates will be used to achieve a uniform soil pH of 6.0.
An alternate maximum or minimum soil pH may be approved,
however, based on the optimum pH for the forest revegetation
species. Soil pH may vary from 4.5 to a maximum of 7.0 from
place to place across the reclaimed area with no more than 10%
of the site below pH 5.0 and/or no more than 10% of the site
above pH 6.5. Low and high pH levels may be approved only
when tree species tolerant of the pH range have been approved
for planting.

7.4.b.1.F.2. The Director shall require the
permittee to fertilize based on the needs of trees and ground
cover vegetation. The permittee shall apply up to 300
pounds/acre of diammonium phosphate (18-46-0) and up to 100
pounds/acre potassium-sulfate (0-0-52) with the ground cover
seeding. Other fertilizer materials and rates may be used only
if the Director finds that the substitutions are appropriate based
on soil tests performed by state certified laboratories.

7.4.b.1.G. Ground Cover Vegetation.

7.4.b.1.G.1. The Director shall require the
permittee to establish a temporary erosion control vegetative
cover as contemporaneously as practicable with backfilling and
696 grading until a permanent tree cover can be established. This
697 cover shall consist of a combination of native and domesticated
698 non-competitive and non-invasive cool and warm season
699 grasses and other herbaceous vine or shrub species including
700 legume species and ericaceous shrubs. All species shall be slow
701 growing, tolerant of low pH, and compatible with tree establish-
702 ment and growth. The ground cover vegetation shall be capable
703 of stabilizing the soil from excessive erosion, but it should be
704 minimized to control tree-damaging rodent population, and
705 allow the establishment and unrestricted growth of native
706 herbaceous plants and trees. Seeding rates and composition
707 must be in the planting plan. The following ground cover mix
708 and seeding rates (pounds/acre) shall be used: winter wheat (15
709 lbs/acre, fall seeding), foxtail millet (5 lbs/acre, summer
710 seeding), redtop (2 lbs/acre), perennial ryegrass (2 lbs/acre),
711 orchardgrass (5 lbs/acre), weeping lovegrass (2 lbs/acre) kobe
712 lespedeza (5 lbs/acre), birdsfoot trefoil (10 lbs/acre), and white
713 clover (3 lbs/acre). Kentucky-31 fescue, sercia lespedeza, all
714 vetches, clovers (except ladino and white clover) and other
715 aggressive or invasive species shall not be used. South- and
716 west-facing slopes with a soil pH of 6.0 or greater, the four
717 grasses in the mixture shall be replaced with 20 lbs/acre of
718 warm-season grasses consisting of the following species:
719 Niagara big bluestem (5 lbs/acre), Camper little bluestem (2
720 lbs/acre), Indian grass (2 lbs/acre), and Shelter switch grass (1
721 lb/acre), or other varieties of these species approved by the
722 Director. Also, a selection of at least 3 native shrub species
723 native of the area shall be included in the ground cover mix.
724 Provided, that on slopes less than 20%, the Director may
725 approve lesser or no vegetative cover when tree growth and
726 productivity will be enhanced and excessive sedimentation will
727 not result.

728 7.4.b.1.G.2. All mixes shall be compatible with
729 the plant and animal species of the region and the commercial
730 forestry use. The Director shall require the use of a variety of
site-specific ground cover treatments so that different ground
cover treatments are used on different parts of the reclamation
area to add biodiversity and landscape mosaic to the overall
plan.

7.4.b.1.G.3. The permittee may regrade and
reseed only those rills and gullies that are unstable.

7.4.b.1.H. Tree Species and Compositions.

7.4.b.1.H.1. Commercial tree and nurse tree
species selection shall be based on site-specific characteristics
and long-term goals outlined in the forest management plan and
approved by a registered professional forester. For commercial
forestry, the Director shall assure that all areas suitable for
hardwoods are planted with native hardwoods at a rate of 500
seedlings per acre in continuous mixtures across the permitted
area with at least six (6) species from the following list: white
and red oaks, other native oaks, white ash, yellow-poplar, black
walnut, sugar maple, black cherry, or native hickories. For
forestry, the Director shall assure that all areas suitable for
hardwoods are planted with native hardwoods at a rate of 450
seedlings per acre in continuous mixtures across the permitted
area with at least three (3) or four (4) species from the follow-
ing list: white and red oaks, other native oaks, white ash,
yellow-poplar, black walnut, sugar maple, black cherry, or
native hickories.

7.4.b.1.H.2. For commercial forestry, each of the
species shall be not less than 10% of the total planted composi-
tion and at least 75% of the total planted woody plant composi-
tion shall be from the list of species in part 7.4.d.1.H.1. Species
shall be selected based on their compatibility and expected site-
specific long-term dynamics. For forestry, if only three species
from the above list are planted, then each of the species shall be
not less than 20% of the total planted composition. If four
species from the list in part 7.4.d.1.H.1. are planted, then each
of the species shall be not less than 15% of the total planted composition. Species shall be selected based on their compatibility and expected site-specific long-term dynamics.

7.4.b.1.H.3. Between 5% and 10% of the required number of woody plants shall be planted in a continuous mix of three or more nurse tree and shrub species that improve soil quality and habitat for wildlife. They shall consist of black alder, black locust, bristley locust, redbud, or bi-color lespedeza or other non-invasive, native nurse tree or shrub species, approved by the Director. One to five acres within each 100 acres of the permit area shall be left unplanted with trees, but left with ponds, wetlands or ground cover vegetation only. These areas may be continuous or divided into 2-4 separate parcels, each at least 0.25 acres large.

7.4.b.1.H.4. On areas unsuitable for hardwoods, the Director may authorize the following conifers: Virginia pine, red pine, white pine, pitch pine, or pitch x loblolly hybrid pine. Areas unsuitable for hardwoods shall be limited to southwest-facing slopes greater than 10% or areas where the soil pH is less than 5.5. These conifers shall be planted as single-species stands less than 10 acres in size at the same rate as the hardwood requirements in 7.4.b.1.H.1 of this rule. The Director shall assure that no reclaimed area of the permit area contains a total of more than 15% conifers.

7.4.b.1.H.5. The Director shall assure that the specific species and selection of trees and shrubs shall be based on the suitability of the planting site for each species’ site requirements based on soil type, degree of compaction, ground cover, competition, topographic position, and aspect.

7.4.b.1.H.6. For commercial forestry only, in addition to the trees and shrubs required in the sections above, 2-0 white pine seedlings shall be planted across all sites at a
rate of 5 to 10 trees per acre. These trees will be used for the productivity check required for Phase III bond release.

7.4.b.1.1. Standards of Success.

7.4.b.1.1.1. The Director shall assure the ability of the commercial forestry and forestry areas to produce a high-quality commercial forest by confirming, after on-site soil testing, that the minesoil selection, placement, and preparation criteria in 7.4.d.1.D.7 through 11 of this rule are met before Phase I bond release may occur. Before approving Phase I bond release, a certified soil scientist shall certify, and the Director shall make a written finding that the minesoil meets these criteria.

7.4.b.1.1.2. The Director shall not authorize Phase II bond release for commercial forestry before the end of the fifth tree growing season. The Director may approve Phase II bond release only if the tree survival is equal to or greater than 300 commercial trees per acre (80% of which must be commercial hardwood species listed in 7.4.b.1.H.1 of this rule) or the rate specified in the forest management plan, whichever is greater. For forestry, Phase II bond release may be granted by the Director at the end of the second growing season only if the tree survival is equal to or greater than 300 trees per acre, 60% of which must be commercial hardwood species listed in part 7.4.d.1.H.1. of this rule, or the rate specified in the forest management plan, whichever is greater. Furthermore, for both commercial forestry and forestry, where there is potential for excessive erosion on slopes greater than 20%, there shall be 70% ground cover where ground cover includes tree canopy, shrub and herbaceous cover, organic litter, and rock cover, and at least 80% of all trees and shrubs used to determine revegetation success must have been in place for at least 60% of the applicable minimum period of responsibility. Trees and shrubs counted in determining such success shall be healthy and
shall have been in place for not less than two growing seasons
with no evidence of die back.

7.4.b.1.1.3. The Director may approve Phase III bond release for commercial forestry and forestry only if all criteria for Phase II bond release in 7.4.b.1.1.2 of this rule are still being met at the time Phase III bond release is considered. For forestry, Phase III bond release may not be authorized until at least five growing seasons have passed since the trees were planted. Additionally, for commercial forestry, Phase III bond release may not be authorized unless commercial forest productivity has been achieved by the end of the twelfth growing season or, if such productivity has not been achieved, if a commercial forestry mitigation plan is submitted to the Director, approved and completed. Commercial forest productivity is achieved only when annual height increments of the white pine indicator species, based on the average of four or more consecutive annual height increments, is equal to or greater than 1.5 feet. The Director shall measure the average four-year growth increment of all trees along two perpendicular transects across the site that will achieve a tree sample size of no less than two trees per acre.

7.4.b.1.1.4. A commercial forestry mitigation plan shall require a permittee who has not achieved commercial forestry productivity requirements by the end of the twelfth growing season to either pay to the Special Reclamation Fund an amount equal to twice the remaining bond amount or to perform an equivalent amount of in-kind mitigation. The Director shall use any money collected under this plan to establish forests on bond forfeiture sites. In-kind mitigation requires establishing forests on AML or bond forfeiture sites. After completion of the mitigation plan, Phase III bond release may be approved if the Director finds that the failure to achieve productivity did not result from a failure to follow the provisions of this rule and did not result in environmental damage.
7.4.b.1.I.5. The Director may release all or part of the bond for the commercial forestry and forestry variance or increment thereof in accordance with this subsection and 38-2-12.2.d. and 12.2.e. of this rule. The Director may release the variance portion if all appropriate standards have been met without regard to the bonding scheme selected for the permit.

7.4.b.1.I. Front Faces of Valley Fills.

7.4.b.1.I.1. Front faces of valley fills shall be exempt from the requirements of this rule except that:

7.4.b.1.I.1.(a) They shall be graded and compacted no more than is necessary to achieve stability and non-erodability;

7.4.b.1.I.1.(b) No unweathered shales may be present in the upper four feet of surface material;

7.4.b.1.I.1.(c) The upper four feet of surface material shall be composed of soil and the materials described in 7.4.b.1.D. of this rule, when available, unless the Director determines other material is necessary to achieve stability;

7.4.b.1.I.1.(d) The groundcover mixes described in subparagraph 7.4.d.1.G. shall be used unless the Director requires a different mixture;

7.4.b.1.I.1.(e) Kentucky 31 fescue, serecia lespedeza, vetches, clovers (except ladino and white clover) or other invasive species may not be used; and

7.4.b.1.I.2. Although not required by this rule, native, non-invasive trees may be planted on the faces of fills.

7.4.b.1.K. Long-term Monitoring and Adaptive Management. The Director shall under-take, with the assistance of the Division of Forestry or other forestry research units, a performance assessment of all Commercial Forestland permits
within 10 years of Phase III bond release. Species composition, biodiversity, productivity, carbon capture, wildlife habitat, stream and wetland biota, and hydrologic function will be assessed. Results will be reported, analyzed, interpreted and used as part of an adaptive management program to improve the regulations and guidelines for Commercial Forestland.

7.5. The Homestead land use meets the requirements for a variance from the AOC requirements of the Act (W.Va. Code 22-3-13(c)). An appropriately planned Homestead will promote sustainable settlement patterns that protect the environment and support the region’s economic development.

7.5.a. Operations receiving a variance from AOC for this use shall establish homesteading on at least one-half (½) of the permit area. The remainder of the permit area shall support an alternate AOC variance use.

7.5.b. The following terms are applicable only to this subsection of this rule.

7.5.b.1. Building Pad means an accessible, designated, and properly drained area where the soil and/or mine-spoil has been specially placed and compacted to minimize post-mining surface settlement. After the building pad is completed, a registered professional engineer shall certify that the building pad was constructed as designed. This certification shall accompany the deed of conveyance.

7.5.b.2. Civic Parcel means a parcel designated in the Land Plan for public use.

7.5.b.3. Commercial Parcel means a parcel retained by the Landowner of record and incorporated within the Homestead Area on which the landowner or its designee may develop commercial uses. The size and location of commercial parcels shall comply with the requirements of this regulation.
7.5.b.4. Community Association means an association of all the homesteaders. This association shall receive title to the civic parcels, conservation easements and nurseries at the time of final bond release.

7.5.b.5. Conservation Easement means an area, typically a strip no less than 200 feet wide, designated in the land plan for the purpose of establishing a natural habitat for the development and migration of native species of fauna and flora. These easements shall extend through the mined areas of the land, starting and ending in natural, undisturbed land. These areas shall be permanent easements maintained for conservation and not commercial purposes.

7.5.b.6. Entity Administering The Civic Parcels means the Community Association or its designee shall administer the civic parcels.

7.5.b.7. Escrow Agent means the Attorney General of the State of West Virginia shall be the Escrow Agent.

7.5.b.8. Homesteader means a citizen of the State that fulfills the requirements of this regulation and who is selected by lottery to reside on a designated homestead parcel.

7.5.b.9. Homestead Area means the entire area designated for homestead use, including roads.

7.5.b.10. Homestead Infrastructure means the facilities necessary to sustain residential use, including roads, electricity, telephone, water and sewage or septic systems.

7.5.b.11. Homestead Parcel means an individual segment of a homestead area designated as either a rural or village parcel. The permittee shall assure that each parcel has been surveyed by a licensed land surveyor before Phase I bond release.
954  7.5.b.12. Homestead Plan means all the required documentation, engineered drawings, authorizations, agreements and schedules which are to be submitted and approved by the Director.

958  7.5.b.13. Homestead Selection Lottery means a lottery sanctioned by the State, operated under rules established and administered by the Director or the Director’s designee as soon as practicable after Phase I bond release.

962  7.5.b.14. Landowner Of Record means the surface estate owner at the time the mining permit is submitted to the Director. More than one Landowner of Record may be involved in a Homestead Plan. The Landowner of Record shall transfer the title to the surface estate of the Homestead Area to the Escrow Agent prior to the beginning of mining. The cost of transfer shall be paid by the Landowner of Record.

969  7.5.b.15. Land Plan means the depiction, with supporting documentation, including surveys and narratives, of the homestead parcels, building pads, roads, easements, civic parcels, commercial parcels, and other features of the Homestead Area.

974  7.5.b.16. Machine Passable Grade means the maximum grade that can be safely accommodated by commonly used, self-propelled, rubber-tired farming equipment.

977  7.5.b.17. Rural Parcels means homesteading parcels planned to promote rural uses such as farming, orchard growing, timber management, viticulture, and Morret gardening. The rural parcels shall be an appropriate size for the designated use and may be up to 40 acres. Rural homesteaders may receive title only to that portion of the land that they have improved over the five-year period.

984  7.5.b.18. Service Drop means the overhead service conductors from the last pole or other aerial support to and
including the splices, if any, connecting to the service-entrance conductors at the building or other structure.

7.5.b.19. Service-Entrance Conductors, Overhead System means the service conductors between the terminals of the service equipment and a point usually outside the building, clear of building walls, where joined by tap or splice to the service drop.

7.5.b.20. Service-Entrance Conductors, Underground System means the service conductors between the terminals of the service equipment and the point of connection to the service lateral.

7.5.b.21. Service Lateral means the underground service conductors between the street main, including any risers at a pole or other structure or from transformers, and the first point of connection to the service-entrance conductors in a terminal box or meter or other enclosure with adequate space, inside or outside the building wall. Where there is no terminal box, meter, or other enclosure with adequate space, the point of connection shall be considered to be the point of entrance of the service conductors into the building.

7.5.b.22. Soil Plan means the maps and descriptions of premining and postmining soil included in the Homestead Plan.

7.5.b.23. Village Parcels means homesteading parcels that provide a higher density of residential population than rural parcels.

7.5.c. Eligibility Requirements And Responsibilities For Homesteaders.

7.5.c.1. Homesteader shall meet the following eligibility requirements:
7.5.c.1.A. Be a resident of the State of West Virginia and be at least 18 years old;

7.5.c.1.B. Apply for a homestead as required by this rule;

7.5.c.1.C. Abide by the rules of the Homestead Selection Lottery;

7.5.c.1.D. Reside on the subject parcel within 12 months after the property is certified as ready for use. Provided that subject to the approval of the Escrow Agent, occupancy may be delayed up to 6 additional months for good cause shown.

7.5.d. Rules For The Lottery.

7.5.d.1. The rules for the Lottery are as follows:

7.5.d.1.A. Each household may receive no more than one homestead.

7.5.d.1.B. Homestead parcels shall be distributed by anonymous lottery.

7.5.d.1.C. For any given Homestead, the lottery shall first be opened only to West Virginians living within three (3) miles of the permitted area within five years of the date of the filing of the permit application. Provided, however, that if parcels remain after an initial lottery, subsequent lotteries shall be held in the following order. The first subsequent lottery shall be open to any resident of a county (or counties, if more than one) in which the mine is located. Further, lotteries, if necessary, shall be open to any resident of West Virginia, and shall be held at six (6) month intervals.

7.5.d.1.D. The lottery shall be held as soon as practicable after Phase I bond release is approved. Adequate
notice shall be provided at least six (6) months in advance of
the lottery.

7.5.d.1.E. The lottery shall be fair, impartial, and open to the public.

7.5.d.1.F. A lottery participant who receives a parcel may decline a parcel, but may not sell the right to homestead on the parcel.

7.5.d.1.G. The right to participate in the lottery is not assignable or saleable.

7.5.d.1.H. Each lottery participant shall, before the lottery, apply for either a rural or a village parcel.

7.5.e. Homestead Plan Development.

7.5.e.1. The Director may authorize Homesteading as a post-mining use only if the following conditions have been satisfied.

7.5.e.1.A. The Homestead Plan and any subsequent modifications shall be prepared under the direction of and certified by a professional engineer, a soil scientist, and a design professional that is either a licensed architect, landscape architect, or AICP certified land planner.

7.5.e.1.B. The Homestead Plan shall identify each member of a specialty group that contributed to the plan. The Plan shall be sufficiently detailed to ensure success in achieving the designated use of each homestead panel and to ensure sound future management of the homestead.

7.5.e.1.C. Homestead plan may be used alone or in conjunction with any other alternate land use plan. The Homesteading area, minus commercial parcels, shall occupy at least 50% of the permitted area. In the event that the Homestead use is used in conjunction with another land use, the Landowner
of Record shall provide for the Homestead use at least as much land on the mining bench as it retains for alternate land use.

7.5.e.1.D. The Permittee shall submit plans prepared at a preferred scale of at least 1 inch = 200 feet, which include the following:

7.5.e.1.D.1. A Land Plan showing the homestead boundaries, homestead parcels, building pads, roads, easements, civic parcels, and commercial parcels, as applicable.

7.5.e.1.D.2. A Site Plan and description of the following:

7.5.e.1.D.2.(a) waste water and sewage systems,
7.5.e.1.D.2.(b) potable water supply,
7.5.e.1.D.2.(c) non-potable water supply (if applicable),
7.5.e.1.D.2.(d) electrical service, and
7.5.e.1.D.2.(e) telephone service.

7.5.e.1.D.3. A grading plan showing contours at an interval appropriate for the map scale and slopes, and including surface drainage and storm water provisions. The Director shall require maps at specific scales and contour intervals to satisfy the designated uses of the homestead parcels and the land plan.

7.5.e.1.D.4. A map showing all off-bench fill areas and the outcrop of the lowest coal bed.

7.5.e.1.D.5. A Soil Plan showing soil and weathered spoil storage areas. The plan shall describe the methods to be used to distribute, protect, and enhance the stored material upon final regrading of the disturbed surfaces. The
plan shall identify the proposed depths of soil and subsoil for each specific use within the Homestead Area. These specific uses may include, but shall not be limited to, the following:

7.5.e.1.D.5.(a) Haul roads
7.5.e.1.D.5.(b) Conservation Easements
7.5.e.1.D.5.(c) Building Pads
7.5.e.1.D.5.(d) Garden Plots
7.5.e.1.D.5.(e) Waste Water and Sewage Disposal Facilities
7.5.e.1.D.5.(f) Storm Drainage Facilities
7.5.e.1.D.5.(g) Wetland Facilities
7.5.e.1.D.5.(h) Utility Easements
7.5.e.1.D.5.(i) Civic/Public Facilities
7.5.e.1.D.5.(j) Commercial Areas
7.5.f. Financial Commitments.

7.5.f.1. A contract between the Permittee and the Director, binding the Permittee to complete the homestead use as soon practicable but no later than two years after the completion of mining, shall be required.

7.5.f.2. The contract between the Permittee and the Director shall, at a minimum, require the Permittee to follow the homesteading reclamation plan.

7.5.f.3. To receive approval for a homestead use, the Permittee shall demonstrate that it has the financial capability to achieve the use and carry out the reclamation plan. The
Permittee shall submit signed statements containing financial
information and data sufficient to demonstrate that the Permittee has the financial capability to achieve the homesteading use.

7.5.f.4. Before approving the Permit, the Director shall find, in writing, that the Permittee has the financial capability to achieve the use.

7.5.g. Required Elements For All Homestead Plans.

7.5.g.1. Boundary of the homestead area:

7.5.g.1.A. The Homestead Area shall be defined by a metes and bounds description prepared and certified by a Professional Engineer or Licensed Land Surveyor registered with the State of West Virginia.

7.5.g.1.B. Non-mined areas may be included in the Homestead Area.

7.5.g.1.C. In the event that any portion of the land transferred to the Escrow Agent is not mined, that land may revert to the Landowner of Record.

7.5.g.2. General Requirements of all Parcels:

7.5.g.2.A. Each individual parcel shall be delineated by metes and bounds description prepared by a Professional Engineer or Licensed Land Surveyor registered with the State of West Virginia.

7.5.g.2.B. Parcels shall support their designated land uses.

7.5.g.2.C. Parcels shall be configured and arranged to minimize adverse environmental impacts.
7.5.g.2.D. The Permittee shall provide adequate road frontage for access to each Homestead, Public Nursery, Civic and Commercial Parcel.

7.5.g.2.E. Houses and appurtenant facilities shall be no closer than 50 feet from the edge of a designated Conservation Easement.

7.5.g.3. Homestead parcels:

7.5.g.3.A. Homestead Parcels shall be designated as either rural or village parcels. All parcels shall contain machine passable land appropriate to the designated use.

7.5.g.3.B. Each rural homestead parcel shall be provided with a garden area of at least 5,000 square feet. Each village homestead parcel shall be provided with a garden area of at least 600 square feet. The garden areas shall be constructed in compliance with the soil requirements set forth in subdivision 7.5.j. of this rule.

7.5.g.3.C. Each rural and village homestead parcel shall contain a building pad of a minimum of 2,500 square feet for a dwelling. Each rural homestead parcel shall also contain a building pad of a minimum of 2,500 square feet for an outbuilding.

7.5.g.4. Civic Parcels:

7.5.g.4.A. The Homestead Plan shall delineate one or more appropriate sites within the total proposed Homestead area for Civic Parcels. These uses may include, but are not limited to, the following: park land, playing fields, schools, post office, and community administrative facilities. This area shall occupy at least 10% of the post-mining permit area.

7.5.g.4.B. The Civic Parcels may be one contiguous parcel or appropriately sized non-contiguous parcels.
7.5.g.4.C. The Civic Parcels shall be deeded at no charge to the duly recognized Community Association.

7.5.g.4.D. The Civic Parcels shall be provided with an access road and utilities that are consistent with the proposed civic land use.

7.5.g.5. Commercial Parcels:

7.5.g.5.A. The Landowner of Record may elect to retain up to 15% of the land in the proposed Homestead Area for the purpose of commercial development; provided that the Landowner of Record may retain no more than 50% of the permitted area.

7.5.g.5.B. The retained commercial area may be comprised of one or more parcels and shall be indicated on the Land Plan.

7.5.g.5.C. In the area for the Commercial Parcel the mine-spoil shall be placed, compacted, and regraded in a manner consistent with the proposed commercial land use.

7.5.g.6. Approval:

7.5.g.6.A. Before approving a homesteading reclamation plan, the Director shall assure that Homestead Plan is reviewed and approved by either a licensed architect, landscape architect, or AICP certified land planner employed by or under contract to the Director. In addition, the Director shall assure that the plans for Rural Parcels are reviewed and approved by an agronomist employed by or under contract with the Director. The applicants shall pay for any review under this subsection.

7.5.h. Construction And Conveyance Of Homestead Parcels. All construction projects not performed by the home-
steaders on Homestead Areas shall be performed by the Permittee, using a West Virginia licensed contractor.

7.5.h.1. Stabilization Of The Homestead Area:

7.5.h.1.A. The Homestead Plan shall describe the methods that will be used during the placement of mine spoil to minimize mine spoil consolidation and its associated ground settlement, where such settlement will adversely affect the use of the homestead. Conditions relating to the placement of structures on the mine-spoil shall be clearly identified in the Plan.

7.5.h.1.B. The Plan must delineate the areas on each parcel where the mine-spoil will be placed in a manner to minimize post-mining land surface settlement on Building Pads, roads and other appropriate areas.

7.5.h.1.C. The placement methodology shall be specified by a qualified engineer. The Plan shall indicate the type and style of structure appropriate for each building pad. The Plan shall include the requirement that a professional engineer will monitor the construction of the building pads to certify compliance with the specifications of the plan.

7.5.h.2. Construction Of The Building Pad:

7.5.h.2.A. Building Pads shall be designed by a registered professional engineer.

7.5.h.2.B. The registered professional engineer shall supervise the placement of the uppermost 20 feet of spoil for Building Pads to minimize consolidation.

7.5.h.2.C. The engineer shall certify the integrity of the Building Pad and that the Building Pads will not settle more than 2 inch after the expected structure is in place.
7.5.h.2.D. Building Pads shall be designed to accommodate the type of building expected to be placed on the pad.

7.5.h.2.E. Building Pads shall not be placed on valley fills.

7.5.h.3. Conveyance Of Homestead Parcels:

7.5.h.3.A.Estimated short and long-term costs to Homesteaders shall be designated in the Homestead Plan and presented to Homesteaders immediately after the Lottery on a parcel specific basis.

7.5.h.3.B. The rights to the surface estate shall be deeded to each Homesteader free and clear of all liens and encumbrances as soon after bond release as the Escrow Agent determines that the property is ready for use. The deeds shall not retain right of entry onto the homestead parcels to conduct future surface mining activities.

7.5.h.3.C. Consistent with State and Federal law, the transfer of the surface to the Escrow Agent may be for surface rights only and need not include any minerals, oil or gas and shall be subject to usual and customary mining or extraction rights.

7.5.h.3.D. Before receiving the Homestead Parcel, each homesteader shall:

7.5.h.3.D.1 Install and reside in a dwelling whose structure complies with the Homestead Plan community association rules, and all applicable local, county and state laws;

7.5.h.3.D.2 Reside on the parcel for at least forty-five weeks each year for five (5) consecutive years prior to receipt of title to the land;
7.5.h.3.D.3. Use and improve the parcel by completing a dwelling that complies with this rule, installing an approved septic system and maintaining vegetative cover on all parts of the homestead parcel and plant trees from the Public Nursery in accordance with subdivision 7.5.i.4. of this rule.

7.5.h.3.E. In the event extreme hardship causes a homesteader to be forced to sell his property before the five-year occupancy period has expired, the Escrow Agent shall convey title early. The Escrow Agent’s determination of extreme hardship shall be reasonable by the Circuit Court of County in which the homestead parcel is located.

7.5.i. Required Infrastructure.

7.5.i.1. Roads:

7.5.i.1.A. The Land Plan shall designate an all-weather road connecting the Homestead Area to a public road or highway. The road shall meet State Department of Highways’ standards, and shall be certified as safe for passenger car traffic by registered professional engineer.

7.5.i.1.B. The Land Plan shall incorporate adequate road frontage to all parcels. Such roads shall be designated in the plan and referred to as “main roads.” Main roads shall meet State Department of Highways standards, and shall be certified as built as safe for passenger car traffic by registered civil engineer. Before the Director may approve a surface mining application for this use, the County or State road authority shall conditionally agree to accept responsibility for maintaining the all-weather and main roads after mining is complete.

7.5.i.1.C. The Land Plan shall provide an entrance from the main road to each parcel, complete with culvert as needed. The Homesteader shall be responsible for extending the driveway from the entrance to the building pad.
7.5.i.2. Waste Water And Sewage:

7.5.i.2.A. The Homestead Plan shall incorporate a waste water and sewage disposal plan conditionally approved by the Director, the West Virginia Bureau of Public Health or the public health authority of the county. The waste water/sewage disposal system shall be approved by the appropriate entities before Phase II bond release shall be authorized. No such approval may be granted unless the system meets local health department standards.

7.5.i.2.B. A variety of waste water and sewage disposal systems, including individual septic systems, may be proposed. Alternative/innovative systems shall be consistent with all State and federal regulations. The reclamation, topsoiling, grading, and revegetation plan of each parcel shall be designed to accommodate the proposed waste water/sewage system.

7.5.i.2.C. The Homestead Plan shall provide a functional waste water and sewage system for each Civic, Commercial or Homestead Parcel. The system shall describe an approved hookup/cleanout point no more than 50 feet from such homestead and civic Building Pads.

7.5.i.2.D. Each Homesteader shall be responsible for all costs incurred to connect structures on the Homestead parcel to the waste water and sewage system. Additionally, if necessary, each homesteader shall be responsible for all costs incurred to install an individual septic system.

7.5.i.2.E. The entity administering the Civic Parcel shall be responsible for all costs incurred to connect structures on the Civic Parcel to the waste water and sewage system.

7.5.i.2.F. The Homestead Plan shall describe the maintenance and upkeep demands of any proposed sewage disposal system, and shall designate the entity responsible for
such maintenance. Phase III bond release may not be approved until the designated entity has accepted responsibility for such maintenance.

7.5.i.3. Water Supply:

7.5.i.3.A. The Homestead Plan shall include a potable water supply source or sources adequate for each Homestead Parcel. The supply of water shall be provided by one of the following methods in the following order of priority: a) water piped from an existing public water supply; b) from wells; or c) from reservoirs with catchment basins adequate to supply the homestead area. Before authorizing any system of potable water supply that is not piped from an existing water supply, the Director shall find, in writing, that the higher order methods of delivery of potable water are not feasible. The Director may rely on the sewers if an appropriate Public Health Authority.

7.5.i.3.B. The Permittee shall establish and pay for the potable water supply system.

7.5.i.3.C. The water shall be delivered at a constant rate and at water industry accepted pressure and flow.

7.5.i.3.D. The Homestead Plan shall describe the future maintenance of the water supply system. If the water system is public, the plan shall designate the entity responsible for its upkeep. Homesteaders may be required to pay a fair market price for the water. Homesteaders shall not be charged for water from their own individual well, although Homesteaders shall be responsible for maintenance of their own wells.

7.5.i.3.E. Individual supply systems shall, at a minimum, meet all applicable health standards, comply with all state and federal laws, and be approved by the appropriate public health authority. Appropriate wellhead protection or watershed protection practices shall be incorporated into the
Homestead Plan, and shall be protect water from potential vulnerability from future land use.

7.5.i.3.F. The source or sources of potable water must be identified within the Homesteading Plan, along with a demonstration of the adequacy of quantity and quality. Upon completion of the reclamation plan, the Permittee shall install and demonstrate the quality and adequacy of the supply. If the originally proposed water supply system proves to be inadequate or unsuitable, the Permittee shall immediately make application with the Director for approval of alternate supplies or adequate improvements to the water supply system. The resulting improvements and/or alternate supplies shall comply with the requirements in this rule and shall be subject to the approval of the appropriate public health authority. Phase I bond release may not be approved until the Director finds that the installed water supply complies with this rule and applicable State and federal law.

7.5.i.3.G. The Homestead Plan shall describe a water supply plan that is adequate to meet the needs of the Homestead Area. The water supply plan shall address the anticipated future land use of the Homestead Area, and must be reviewed and approved by the Director and the appropriate public health authorities.

7.5.i.3.H. The potable water supply sources shall meet the Federal Primary Drinking Water Maximum Contaminant Level standards. (40 CFR 141, Subpart B). Verification of such quality shall be provided to the appropriate public health authority.

7.5.i.3.I. The supply source means the contiguous water body or contiguous aquifer from which supplies are drawn. If multiple homestead unit supplies are withdrawn from the same source, determination of water quality of the source
shall be made at points that are representative of the water that
will be withdrawn from the source.

7.5.3.J. The potable water supply shall provide for
a minimum quantity of 12,500 gallons per month per homestead
unit. The supply may incorporate one or a combination of
sources and storage facilities demonstrated to provide an
adequate supply for each homestead parcel.

7.5.3.K. If a ground water source is to be used, the
plan and the confirmation of the installed ground water supply
system shall be conducted under the direction of a qualified
ground water professional. The locations of drilled wells shall
be consistent with appropriate public health requirements.

7.5.3.L. The water supply shall be developed (or
extended as applicable) free of charge to the homesteader to a
point within 50 feet of the designated residence and civic parcel
construction pads for each homestead unit.

7.5.3.M. After initial establishment of compliant
water quality and quantity, responsibility for maintenance of the
water supply shall revert to the homesteader or, in the event that
the supply is community- or publicly-controlled, to the appro-
priate and capable public authority.

7.5.3.N. When the potable water supply is insuffi-
cient to meet the needs of the proposed use for rural homestead
parcels, the Homestead Plan shall include nonpotable water
supplies for uses that do not require potable water. Before
approving Phase I bond release, the Director shall find that the
non-potable water supply is sufficient in both quality and
quantity for such uses, including agricultural uses. The plan for
the system shall indicate the provisions that will be taken to
assure that the potable water supply shall not be compromised.
The approval of nonpotable water supplies distribution and
handling system shall be consistent with State and federal law.
7.5.i.3.O. Each Homesteader shall be responsible for costs incurred to connect dwellings to water facilities.

7.5.i.3.P. The entity administering the civic parcel shall be responsible for costs incurred to connect structures on the civic parcel to water facilities.

7.5.i.3.Q. If a reservoir is used, a registered professional engineer shall certify its integrity. The engineer shall also certify that, taking account of inflow, seepage and evaporation, the reservoir will provide the amount of water and water pressure required by the Homestead use.

7.5.i.4. Electrical Utilities:

7.5.i.4.A. The Homestead Plan shall provide access to electrical power for all Homestead Parcels and for all Civic Parcels requiring electric power. The quantity of electricity supplied shall be sufficient to support the proposed use. Phase II bond release may not be approved until all the necessary facilities have been rendered operational and extended to a point where the service drop for the Homestead or Civic Parcel can be accomplished in no more than one span. If a service lateral is proposed, access to electrical power shall be deemed to have been satisfactorily provided when the service lateral is no more than 50 feet in length. Such electrical power facilities shall be designated in the plan and referred to as “main electrical power facilities”.

7.5.i.4.B. All line work shall conform to the practices of the electric power utility servicing the area. The installed main utilities and associated equipment shall be conveyed to the electric power utility servicing the area.

7.5.i.4.C. Each Homesteader shall be responsible for all costs incurred to install a service drop or service lateral the building pads.
7.5.i.4.D. The entity administering the Civic Parcel shall be responsible for all costs incurred to install a service drop or service lateral to structures on the Civic Parcel.

7.5.i.4.E. Each Homesteader shall be responsible for cost of electrical service.

7.5.i.5. Communication Services:

7.5.i.5.A. The Permittee shall provide access to telephone service for all Homestead Parcels and for all Civic Parcels requiring telephone service. Phase II bond release may not be approved until access to telephone service has been rendered operational and extended to a point within 50 feet of the Parcel’s building pads. Such telephone or equivalent utilities shall be designated in the plan and referred to as “main telephone facilities”.

7.5.i.5.B. All service line work shall conform to the practices of the telephone service provider of the area. All line work and associated equipment shall be conveyed to the local telephone service provider.

7.5.i.5.C. Each Homesteader shall be responsible for all costs incurred to extend and connect main telephone facilities to the building pads.

7.5.i.5.D. The entity administering the Civic Parcel shall be responsible for all costs incurred to extend and connect main telephone facilities to the Civic Parcels.

7.5.i.5.E. Each Homesteader shall be responsible for the cost of telephone service.

7.5.i.6. Solid Waste:

7.5.i.6.A. The Homestead Plan shall contain a plan for the off-site disposal of solid waste that is acceptable to the Director and the appropriate public health authority.
7.5.i.7. Surface Drainage And Storm Water:

7.5.i.7.A. The Homestead Plan shall contain a detailed surface drainage pattern and storm water runoff control plan. This plan shall be certified by a registered professional engineer.

7.5.i.7.B. The surface drainage pattern and storm water plan shall be consistent with a surface drainage pattern that would be found on natural topography similar to the post-mining topography proposed in the Homestead Plan. The beds of the surface and storm water drainways shall contain material that is as natural as practicable.

7.5.i.8. Reforested Conservation Easements:

7.5.i.8.A. The Homestead Plan shall identify areas within the Homestead Area reserved for reforested Conservation Easements. These areas shall be reforested by the Permittee at no cost to Homesteaders.

7.5.i.8.B. In the event that an isolated forest patch exists as a result of mining activities, the Conservation Easement shall serve as a corridor to establish a wind break and a forested connection with the isolated forest patch and to facilitate the adequate movement of fauna out of and into the isolated forest patch.

7.5.i.8.C. Conservation Easements may serve the purpose of a storm water management system. In such case, the technical specifications applicable to the design and construction of the storm water channels and their associated structures shall be satisfied.

7.5.i.8.D. Conservation Easement shall compromise at least 10% of the Homestead Area, including the Commercial Parcels.
7.5.i.8.E. The Director shall assure that all areas suitable for hardwoods in the Conservation Easement are planted with native hardwoods at a rate of \(500\) seedings per acre in continuous mixtures across the conservation easement with at least six (6) species from the following list: white and red oaks, other native oaks, white ash, yellow-poplar, black walnut, sugar maple, black cherry, or native hickories. Plants shall be a minimum of \(3/4\)” in diameter at breast height at planting.

7.5.i.8.F. Each of the species shall not be less than 10% of the total planted composition and at least 75% of the total planted woody plant composition shall be from the above list of species. Species shall be selected based on their compatibility and expected site-specific long-term dynamics.

7.5.i.8.G. At least 10% of the required number of woody plants shall be a planted continuous mix of three or more nurse tree and shrub species that improve soil quality and habitat for wildlife. They shall consist of black alder, black locust, bristley locust, redbud, or bi-color lespedeza.

7.5.i.8.H. On areas unsuitable for hardwoods, the Director may authorize the following conifers: Virginia pine, red pine, white pine, pitch pine, or pitch x loblolly hybrid pine. Areas unsuitable for hardwoods shall be limited to south-west-facing slopes of greater than 10% or areas where the soil pH is less than 5.5. These conifers shall be planted as single-species stands less than 10 acres in size at the same rate as the hardwood requirements in this rule. The Director shall assure that no Conservation Easement area contains a total of more than 15% conifers.

7.5.i.8.I. The Director shall assure that the specific species and selection of trees and shrubs shall be based on the suitability of the planting site for each species site requirements based on soil type, degree of compaction, ground cover, competition, topographic position, and aspect.
7.5.i.8.J. The Director shall assure that the total planting rate of trees and nurse plants is not less than 500 stems per acre.

7.5.i.9. Perpetual Easements:

7.5.i.9.A. The Homestead Plan shall describe areas within the Homestead reserved for perpetual easements relating to storm water management, protection of outslopes and steep slopes, protection of water sources, public roads of all kinds, and utilities. These areas shall be included within Homesteader’s deeded parcels and may have permanent development restrictions included within the Homesteader’s deeds of conveyance.

7.5.i.9.B. Fill faces shall be placed under perpetual easements that prohibit activities that may lead to instability or erodability. Trees may be planted on the faces of the fills.

7.5.i.10. Wetlands: Each Homestead Plan may describe areas within the Homestead Area reserved for created wetlands. These created wetlands may be ponds, permanent impoundments or wetlands created during mining. They may be left in place after final bond release.

7.5.j. Soils, Soil Placement And Grading.

7.5.j.1. General Requirements:

7.5.j.1.A. Phase I bond release shall not be approved until a soil scientist certifies and the Director finds that the soil meets the criteria established in this rule and has been placed in accordance with this rule.

7.5.j.1.B. The Homestead Plan shall include a topographic map of the permit area, 1:12000 or finer, showing the location of pre-mining native solids, weathered slightly-acidic brown sandstone and drainages which includes
site index for common native tree species. A profile description of each soil mapping unit that includes, at minimum, soil horizons, including the O. horizon depths, soil texture, structure, color, reaction and bedrock type. A certified professional soil scientist shall conduct a detailed on-site survey, create the maps, and provide the written description of the soils and sandstones.

7.5.j.1.C. The Homesteading Plan shall include a description of the present soils and soil substitutes to be used as the plant medium, and a description of the proposed handling, and placement of these materials. The handling plan shall include procedures to:

7.5.j.1.C.1. Protect native soil organisms and the native seed pool;
7.5.j.1.C.2. Include organic debris such as litter, branches, small logs, roots and stumps in the soil;
7.5.j.1.C.3. Inoculate the minesoil with native soil organisms; and
7.5.j.1.C.4. Increase soil fertility.

7.5.j.1.D. A surface preparation plan which includes a description of the methods for replacing and grading the soil and other soil substitutes and their preparation for homesteading.

7.5.j.2. Landscape Criteria:
7.5.j.2.A. The Director shall assure that the postmining landscape is rolling, and diverse. The backfill on the mine bench, shall be configured to create a postmining topography that includes the principles of landforming to reflect the premining irregularities in the land. Postmining landform shall provide a rolling topography with slopes of between 5% and
The elevation change between the ridgeline and the valleys shall be varied. The slope lengths shall not exceed 500 feet. The minimum thickness of backfill, including minesoil, placed on the pavement of the basal seam mined in any particular area shall be 10 feet.

7.5.j.2.B. At least 3 ponds, permanent impoundments or wetlands totaling at least 3.0 acres shall be created on each 200 acres of permitted area. They shall be dispersed throughout the landscape and each water body shall be no smaller than 0.20 acres. All ponds, permanent impoundments or wetlands shall comply with all requirements of this rule, and shall be left in place after final bond release.

7.5.j.2.C. All ponds and impoundments created during mining shall be left in place after bond release and shall comply with all the requirements of this rule.

7.5.j.2.D. The ponds, permanent impoundments, surface water channels and wetlands on the Permit Area shall be vegetated on the perimeter with at least six native herbaceous species typical of the region at a density of not less than 1 plant per linear foot of edge, and at least 4 native shrub species at a density of not less than 1 shrub per 6 linear feet of edge. No species of herbaceous or shrub species shall be less than 15% of the total for its life form.

7.5.j.2.E. The landscape criteria in this rule do not apply to valley fills.

7.5.j.3. Soil:

7.5.j.3.A. Soil is defined as and shall consist of the O, A, B, C, and Cr horizons.

7.5.j.3.B. The Director shall require the operator to recover and use all the soil on the mined area, as shown on the soil maps, except for those areas with a slope of at least 50%,
and other areas from which the applicant affirmatively demonstra-
tes and the Director finds that soil cannot reasonably be re-
covered. The Director shall assure that all saved soil includes
all of the material from the O and A horizons.

7.5.j.3.C. When the Director determines that available soil volume on the permit area is not sufficient to meet the depth requirements, selected overburden materials may be used as soil substitutes. Soil substitutes shall consist of weathered, slightly acid, brown sandstone from within 10 feet of the soil surface if the Director determines that such material is available. Material from this layer may be removed with the soil and mixed with the soil in order to meet the depth requirement.

7.5.j.3.D. If the applicant affirmatively demonstrates and the Director finds that weathered, slightly acid, brown sandstone from within 10 feet of the soil surface cannot reasonably be recovered, weathered, slightly acid, brown sandstone taken from below 10 feet of the soil surface from anywhere in the permit area may be substituted. Materials may be suitable for this purpose only if their bulk pH in water is between 5.0 and 7.0. Materials with net potential acidity greater than 5 tons of calcium carbonate equivalence per 1000 tons may not be used.

7.5.j.3.E. Before approving the use of soil substitutes, the Director shall require the permittee to demonstrate that the selected overburden material is suitable for restoring land capability and productivity. This will be demonstrated by the results of chemical and physical analyses, including pH, total soluble salts, phosphorus, potassium, calcium, texture class, acid-base accounting, and other such analyses as necessary.

7.5.j.3.F. The final surface material used on all parts of the permit area except roads, building pads, and valley fill faces shall consist of a minimum of 4 feet of soil, or a mixture of soil and suitable soil substitutes.
Homesteading soil depth shall contain at least 33% soil. If the applicant affirmatively demonstrate and the Director finds, that sufficient weathered slightly acid brown sandstone cannot reasonably be recovered from the mined area to satisfy the mine soil depth requirement, then up to one quarter of the total volume of the mine soil may consist of highly-fractured sandstone, as long as it has been demonstrated that the physical and chemical quality of this material is suitable.

If the applicant does not demonstrate that there is sufficient material available on the permit area to satisfy the requirements of this rule, then the Director may not authorize a Homesteading variance.

The Director may require the operator to include as part of the mine soil mix organic debris such as forest litter, branches, small logs, roots and stumps in the soil to help reseed the native vegetation, inoculate the mine soil with native soil organisms and increase soil fertility.

The Director shall require that soil be removed and reapplied in a manner that minimizes stockpiling such that seed pools and soil organisms remain biological viable. No more than 10% of the available soil, described in the Director’s findings, may be placed in a long-term stockpile, soil redistribution shall be done within one month of soil removal. Except for soil in a long-term stockpile, soil shall be stored for less than one month in piles less than six feet high and 24 feet wide in a stable area within the permit area where it will not be disturbed and will be protected from water or wind erosion or contaminants that lessen its capability to support vegetation. Long-term stockpiles shall be seeded with ground cover mixes used for reforestation.

Soil Placement And Grading:
7.5.j.4.A. Except for valley fill faces, building pads, roads, and other areas that must be compacted, the Director shall require the Permittee to place minesoil loosely and in a non-compacted manner while meeting static safety factor requirements. Grading the final surface shall be minimized to reduce compaction. Once the material is placed, light grading equipment shall be used to grade the tops of the piles, roughly leveling the area with no more than one or two passes. Tracking in and rubber-tired equipment shall not be used. Non-permanent roads, equipment yards and other trafficked areas shall be deep-ripped (24" to 36") to mitigate compaction.

7.5.j.4.B. Soil physical quality shall be inadequate if it inhibits water infiltration or prevents root penetration or if their physical properties or water-supplying capacities cause them to restrict root growth of trees. Slopes greater than 50% shall be compacted no more than is necessary to achieve stability and non-erodability.

7.5.j.4.C. The Director shall require the permittee to leave soil surfaces rough with random depressions across the entire surface to catch seed and sediment, conserve soil water. Organic debris such as forest litter, logs, and stumps may be left on and in the soil.

7.5.j.5. Limiting And Fertilizing: The Permittee shall submit a liming and fertilizing plan. The Director shall assure that the liming and fertilizing plan is appropriate for establishing the ground cover vegetation.

7.5.j.6. Ground Cover Vegetation:

7.5.j.6.A. The Director shall require the permittee to establish a temporary vegetative cover as contemporaneously as practicable with backfilling and grading. This cover shall consist of a combination of native and domesticated non-invasive cool and warm season grasses and other herba-
ceous vine or shrub species including legume species and ericaceous shrubs. All species shall be slow growing. The ground cover vegetation shall be capable of stabilizing the soil from excessive erosion. Seeding rates and composition must be in the Homestead Plan. The following ground cover mix and seeding rates (pounds/acre) shall be used: winter wheat (15 lbs/acre, fall seeding), foxtail millet (5 lbs./acre, summer seeding), redtop (2 lbs/acre), perennial ryegrass (2 lbs/acre), orchardgrass (5 lbs/acre), weeping lovegrass (2 lbs/acre) kobe lespedeza (5 lbs/acre), birdsfoot trefoil (10 lbs./acre), and white clover (3 lbs/acre). Kentucky-31 fescue, serecia lespedeza, all vetches, clovers (except ladino and white clover) and other aggressive or invasive species shall not be used. On south- and west-facing slopes with a soil pH of 6.0 or greater, the four grasses in the mixture shall be replaced with 20 lbs/acre of warm-season grasses consisting of the following species: Niagara big bluestem (95 lbs/acre), Camper little bluestem (2 lbs/acre), Indian grass (2 lbs/acre), and Shelter switch grass (1 lb/acre), or other varieties of these species approved by the Director. Also, a selection of at least 3 ericaceous shrub species shall be included in the ground cover mix.

7.5.j.6.B. The Permittee may regrade and reseed only those rills and gullies that are unstable.

7.5.j.7. Front Faces Of Valley Fills:

7.5.j.7.A. Front faces of valley fills shall be exempt from the requirements of this rule except that:

7.5.j.7.A.1. They shall be graded and compacted no more than is necessary to achieve stability and non-erodability.;

7.5.j.7.A.2. No shales may be present in the upper four feet of surface material;

7.5.j.7.A.3. The upper four feet of surface material shall be composed of soil and weathered brown sandstone when
available, unless the Director determines other material is necessary to achieve stability;

7.5.j.7.A.4. The groundcover mixes described in subparagraph shall be used unless the Director requires a different mixture.

7.5.j.7.A.5. Kentucky 31 fescue, serecia lespedeza, vetches, clovers (except ladino and white clover) or other invasive species may not be used; and

7.5.j.7.B. Although not required by this rule, native, non-invasive trees may be planted on the faces of fills.

7.5.k. Requirements For Reclamation Maps. An appropriately scaled, "as-built" topographic map of the Homestead Area shall be prepared and submitted as part of the permit application. An identically scaled *overlay* map showing the elevation contours at the base of all mined areas as well as the original ground contour of all excess mine spoil storage areas shall accompany the as-built map. The overlay map shall identify all backfilled mine sites and excess mine-spoil storage areas. The overlay map shall depict the boundaries of all parcels, areas of mine spoil specifically compacted for the placement of structures, easements, and areas that the Director may designate for special or limited uses. All post-reclamation maps shall be prepared under the direction of and certified by a registered professional engineer and shall be recorded with the county within one year following the final reclamation of the proposed Homestead Area.

7.5.1. Homestead Village.

7.5.1.1. Homestead Village: The Homestead Village provides for a residential development at a higher density than in rural Homestead parcels. The Village is intended to:
7.5.1.1.A. Encourage mixed residential and commercial land uses, and

7.5.1.1.B. At least 20% of the Homestead Area shall be composed of Village parcels.

7.5.1.2. Village Parcel Requirements:

7.5.1.2.A. Each Village homestead parcel shall be no larger than one acre in size.

7.5.1.2.B. Each parcel shall have a minimum road frontage of 40 feet. No pipe stem parcel arrangements are permitted.

7.5.1.2.C. Each parcel shall be graded evenly to 5% maximum.

7.5.1.3. Common Lands: In addition to the Civic Parcels and Conservation Easements, each Homestead Area shall include a reserve of 10% of the land as a common area. The Common Land shall be conveyed to the Community Association. The planning and maintenance of the Common Land shall be the responsibility of the Community Association.

7.5.1.4. Public Nursery: Each Village Homestead shall designate an area for a Public Nursery constructed and planted by the Permittee at no cost to the Homesteaders. The nursery may be located adjacent to the Common Land but shall not constitute the required Common Land area. The Nursery shall provide woody plants of high quality and appearance for the use of the Homesteaders as specified below.

7.5.1.4.A. The nursery shall be 1 acre per 30 acres of Homestead Area. The Public Nursery shall be a civil parcel. The Permittee shall plant the nursery with the same species and to the same standards as required in the Conservation Easement. Once bond is released, the Community Association shall be
responsible for maintaining the nursery. Success standards shall be the same as for the conservation easements.

7.5.l.4.B. The nursery plants shall consist of at least six species from the following list: white oak, red oak, other native oaks, white ash, yellow poplar, black walnut, sugar maple, black cherry, or native hickories.

7.5.l.4.C. Adequate water supply shall be provided for the nursery. This may be achieved through any of the water supply means specified or through the storm water drainage system.

7.5.l.4.D. The nursery shall be maintained in manner consistent with the healthy development of the plants. The nursery plants shall meet the following criteria upon conveyance: 1) in regular form for the species, 2) 80% live branches, and 3) color consistent with the species. Materials not meeting the specifications shall be replaced with like species by the permittee. After final bond release, the nursery shall be conveyed to the Community Association.

7.5.l.4.E. Each Homesteader shall be allowed to take trees from the nursery as determined by the Community Association. The remainder of the trees shall be for the common landscapes.

7.5.m. Community Association:

7.5.m.1. At the completion of the lottery, a Community Association shall be established among the designated Homesteaders for each Homestead Area. The Association shall maintain and administer the public areas, Conservation Easements and Civic Parcels of the Homestead and may levy membership fees.
7.5.m.2. By-laws for the Community Association shall be developed by the Escrow Agent, working with the Home- steaders and a qualified design professional as defined by this rule. The permittee shall pay the qualified land designer for such services. The by-laws may establish rules for building standards and other Homestead Area rules, as appropriate.

7.5.m.3. Membership in the association is mandatory for all Homesteaders and their successors.

7.5.m.4. The association shall obtain liability insur- ance for its property and shall be responsible for maintenance of insurance and taxes on undivided open space. The association may place liens on the homes or houselots of its members who fail to pay their association dues in a timely manner. Such liens may require the imposition of penalty interest charges.

7.5.m.5. The association shall administer common facilities and pay for maintaining and developing such facilities.

7.5.n. Interim Homestead Management

7.5.n.1. The Director or the Director’s designee shall administer the Homestead Selection Lotteries.

7.5.n.2. The Escrow Agent shall monitor the 5-year occupancy requirement for each Homestead Parcel and transfer of the titles of the surface estates to the qualified Homesteaders.

7.5.n.3. The Escrow Agent shall manage and administer the homestead between final bond release and the time when all of the titles to the Homestead Parcels have been transferred and duly recorded with the Clerk of the County.

7.5.n.4. Funding these services shall be guaranteed by an insured Bank account established by the Permittee.
7.5.n.5. Before approving any Homestead variance, the Director shall find, in writing, that the funds in the account are sufficient to pay for these services.

7.5.n.6. After final bond release, this account shall be administered by the Escrow Agent.

7.5.n.7. The Escrow Agent shall receive the surface rights to the entire Homestead Area and all-weather and main roads before mining begins.

7.5.n.8. The Escrow Agent shall be charged with responsibility for transferring the surface rights in escrow to the Homesteaders, the Community Association, or the State or county road authority.

7.5.n.9. Such transfers shall promptly occur upon certification by the Escrow Agent that the Homesteader has met the requirements of this rule.

7.5.n.10. Before the homesteader receives title, property may revert to the Escrow Agent, when after notice and hearing, the Escrow Agent determines that the homesteader has not abided by this rule. The Escrow Agent’s determination shall be reviewable by the Circuit Court of the County in which the homestead parcel is located.

7.5.n.11. If developed property reverts to Escrow, the Escrow Agent shall promptly sell the property and remit proceeds, less costs, to the homesteader, up to the value of the homesteader’s investment.

7.5.n.12. Because deeds to Homestead Parcels will not be transferred to Homesteaders before a Homesteader has lived on a parcel for five years, lending institutions may be reluctant to make loans to Homesteaders before the five-year period has expired. Accordingly, to assure that lending institutions are
1921 willing to make loans to Homesteaders during this period, the
1922 Escrow Agent shall establish a system to provide mortgage
1923 insurance to homesteaders so that lenders will be able to finance
1924 private development of homestead parcels. The Escrow Agent
1925 shall have all powers necessary to structure loans and other
1926 necessary transactions so that lenders are reasonably secure.

1927 7.5.o. Bond Release:

1928 7.5.o.1. Before approving Phase I bond release, the
1929 Director shall assure that the soil is in place, the vegetative
1930 cover has been established, that the water system has been
1931 completed, that the roads have been completed and transferred
1932 to the State or county road authority, and that the main electric-
1933 ity transmission line is in place.

1934 7.5.o.2. Phase II bond release may not occur before two
1935 years have passed since Phase I bond release. Before approving
1936 Phase II bond release, the Director shall assure that the vegeta-
1937 tive cover is still in place. The Director shall further assure that
1938 the tree survival on the Conservation Easements and Public
1939 Nurseries are no less than 300 trees per acre (80% of which
1940 must be species from the approved list). Furthermore, in the
1941 Conservation Easement and Public Nursery areas, there shall be
1942 a 70% ground cover where ground cover includes tree canopy,
1943 shrub and herbaceous cover, organic litter, and rock cover.
1944 Trees and shrubs counted in considering success shall be
1945 healthy and shall have been in place at least two years, and no
1946 evidence of inappropriate dieback. Phase II bond release shall
1947 not occur until the service drops for the utilities and communi-
1948 cations have been installed to each Homestead Parcel.

1949 7.5.o.3. The Director may authorize Phase III bond
1950 release only after all parcels in the Homestead Areas are
1951 certified and ready for occupancy.
Once final bond release is authorized, the Permittee’s responsibility for implementing the Homestead Plan shall cease.

And,

On page 129, subsection 14.12.a.1, by following the words ‘industrial, commercial, residential’ by striking the word ‘woodlands’ and inserting in lieu thereof ‘commercial forestry’.

(v) The legislative rule filed in the state register on the sixth day of August, one thousand nine hundred ninety-nine, authorized under the authority of section two, article four, chapter twenty-two of this code, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of January, two thousand, relating to the division of environmental protection (mining and restoration for sandstone, limestone and sand, 38 CSR 2A), is disallowed and not authorized.

(w) The legislative rule filed in the state register on the sixth day of August, one thousand nine hundred ninety-nine, authorized under the authority of section two, article four, chapter twenty-two of this code, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of January, two thousand, relating to the division of environmental protection (mining and reclamation of minerals other than coal, limestone, sandstone and sand, 38 CSR 2B), is disallowed and not authorized.

(x) The legislative rule filed in the state register on the fifth day of August, one thousand nine hundred ninety-nine, autho-
1982 rized under the authority of section twenty, article fifteen, 1983 chapter twenty-two of this code, modified by the division of 1984 environmental protection to meet the objections of the legisla- 1985 tive rule-making review committee and refiled in the state 1986 register on the twenty-first day of January, two thousand, 1987 relating to the division of environmental protection (sewage 1988 sludge management, 33 CSR 2), is authorized.

1989 (y) The legislative rule filed in the state register on the 1990 fourth day of August, one thousand nine hundred ninety-nine, 1991 authorized under the authority of section six, article eighteen, 1992 chapter twenty-two of this code, modified by the division of 1993 environmental protection to meet the objections of the legisla- 1994 tive rule-making review committee and refiled in the state 1995 register on the twenty-first day of January, two thousand, 1996 relating to the division of environmental protection (hazardous 1997 waste management, 33 CSR 20), is authorized.

1998 (z) The legislative rule filed in the state register on the 1999 twenty-eighth day of July, one thousand nine hundred 2000 ninety-nine, authorized under the authority of section ten, 2001 article eleven, chapter twenty-two of this code, relating to the 2002 division of environmental protection (water pollution control 2003 permit fee schedule, 47 CSR 26), is authorized.

2004 (aa) The legislative rule filed in the state register on the 2005 twenty-eighth day of July, one thousand nine hundred ninety- 2006 nine, authorized under the authority of section three, article two, 2007 chapter twenty-two-c of this code, relating to the division of 2008 environmental protection (state water pollution control revolv- 2009 ing fund program, 47 CSR 31), is authorized.

2010 (bb) The legislative rule filed in the state register on the 2011 third day of August, one thousand nine hundred ninety-nine, 2012 authorized under the authority of section five, article twelve,
chapter twenty-two of this code, relating to the division of environmental protection (groundwater protection standards at steam electric generating facilities, 47 CSR 57A), is authorized.

(cc) The legislative rule filed in the state register on the first day of January, one thousand nine hundred sixty-five, authorized under the authority of section seven, article five, chapter twenty-two, of this code relating to the division of environmental protection (to prevent and control air pollution from coal refuse disposal areas, 45 CSR 1), is repealed.

§64-3-2. Environmental quality board.

The emergency rule relating to the environmental quality board (requirements governing water quality standards, 46 CSR 1) filed in the state register on the eighteenth day of October, one thousand nine hundred ninety-nine, and subsequently refiled in the state register on the fourteenth day of January, two thousand is repealed and not authorized. The legislative rule filed in the state register on the sixth day of August, one thousand nine hundred ninety-nine, authorized under the authority of section four, article three, chapter twenty-two-b, of this code, modified by the environmental quality board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of January, two thousand, relating to the environmental quality board (requirements governing water quality standards, 46 CSR 1), is authorized, with the following amendment:

"On page ten, at the end of subdivision 6.2.d by adding a new sentence to read as follows:

‘The manganese human health criteria shall not apply where the discharge point of the manganese is located more than five miles upstream from a known drinking water source.’"
CHAPTER 162

(Com. Sub. for H. B. 4221 — By Delegates Hunt, Linch, Compton, Jenkins, Faircloth and Riggs)

[Passed March 9, 2000; 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; and to further amend said article by adding thereto a new section, designated section two, 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 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 certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; authorizing the division of culture and history to promulgate a legislative rule relating to the rehabilitation of certified historic residential structures tax credit; and authorizing the division of rehabilitation services to promulgate a legislative rule relating to the Ron Yost assistance services act board.
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; and that said article be further amended by adding thereto a new section, designated section two, all 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.

The legislative rule filed in the state register on the fifth day of August, one thousand nine hundred ninety-nine, authorized under the authority of section eight-g, article twenty-one, chapter eleven, of this code, modified by the division of culture and history to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of January, two thousand, relating to the division of culture and history (rehabilitation of certified historic residential structures tax credit, 82 CSR 4), is authorized.

§64-4-2. Division of rehabilitation services.

The legislative rule filed in the state register on the sixth day of August, one thousand nine hundred ninety-nine, under the authority of section one, article ten-l, chapter eighteen, of this code, modified by the division of rehabilitation services to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of September, one thousand nine hundred ninety-nine, relating to the division of rehabilitation services (Ron Yost assistance services act board, 198 CSR 1), is authorized.
AN ACT to amend and reenact article five, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, 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 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 certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; disapproving certain legislative rules; repealing certain legislative rules; authorizing the health care authority to promulgate a legislative rule relating to certificates of need; authorizing the health care authority to promulgate a legislative rule relating to health services offered by health professionals; authorizing the division of health to promulgate a legislative rule relating to behavioral health centers licensure; disapproving the division of health legislative rule relating to personal care homes; authorizing the division of health to promulgate a legislative rule relating to food establishments;
authorizing the division of health to promulgate a legislative rule relating to fire department rapid response services; authorizing the division of health to promulgate a legislative rule relating to AIDS-related medical testing and confidentiality; authorizing the division of health to promulgate a legislative rule relating to the cancer registry; authorizing the division of health to promulgate a legislative rule relating to behavioral health consumer rights; authorizing the division of health to promulgate a legislative rule relating to public water systems design standards; authorizing the bureau for child support enforcement to promulgate a legislative rule relating to providing information to credit reporting agencies; and authorizing the bureau for child support enforcement to promulgate a legislative rule relating to guidelines for child support awards.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.

§64-5-1. Health care authority.
§64-5-2. State board of health; division of health.
§64-5-3. Child support enforcement division.

§64-5-1. Health care authority.

(a) The legislative rule filed in the state register on the sixth day of August, one thousand nine hundred ninety-nine, authorized under the authority of section four, article two-d, chapter sixteen of this code, modified by the health care authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of September, one thousand nine hundred ninety-nine,
relating to the health care authority (certificate of need, 65 CSR 7), is authorized.

(b) The legislative rule filed in the state register on the sixth day of August, one thousand nine hundred ninety-nine, authorized under the authority of section four, article two-d, chapter sixteen of this code, modified by the health care authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of September, one thousand nine hundred ninety-nine, relating to the health care authority (health services offered by health professionals, 65 CSR 17), is authorized with the following amendments:

"On page two, section three, subsection 3.2, following the words 'regardless of the cost associated with the proposal', by striking out the remainder of the sentence and inserting in lieu thereof 'unless cost is a factor for defining a diagnostic center pursuant to subdivision 2.1.a of this rule.'"

§64-5-2. State board of health; division of health.

(a) The legislative rule filed in the state register on the sixth day of August, one thousand nine hundred ninety-nine, authorized under the authority of section one, article nine, chapter twenty-seven of this code, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-ninth day of December, one thousand nine hundred ninety-nine, relating to the division of health (behavioral health centers licensure, 64 CSR 11), is authorized.

(b) The legislative rule filed in the state register on the sixth day of August, one thousand nine hundred ninety-nine, authorized under the authority of section five, article five-d, chapter sixteen of this code, modified by the division of health to meet the objections of the legislative rule-making review committee
and refiled in the state register on the twenty-second day of
October, one thousand nine hundred ninety-nine, relating to the
division of health (personal care homes, 64 CSR 14), is
disapproved and not authorized for promulgation.

(c) The legislative rule filed in the state register on the
fourth day of August, one thousand nine hundred ninety-nine,
authorized under the authority of section seven, article one,
chapter sixteen of this code, modified by the division of health
to meet the objections of the legislative rule-making review
committee and refiled in the state register on the twentieth day
of January, two thousand, relating to the division of health
(food establishments, 64 CSR 17), is authorized with the
following amendments:

"On page one, section 2.1.a., at the end of the sentence, by
inserting the words ‘and the definition of “whole-muscle, intact
beef” in subparagraph 1-201.10(B)(94);"

On page two, section 2.1.b., after the words ‘Chapter 2' by
inserting a comma and the words “except for paragraph 2-
103.11(H), Persons In Charge;”

On page two, section 2.1.c. after the word “paragraphs” by
inserting “3-201.11(E), Compliance With Food Law,”;

On page two, section 2.1.c. after the words “3-
401.11(D)(2)” by striking out the words “Cooking of”;

On page two, section 2.1.c. after the words “section 3-
603.11” by striking out the words “Consumer Advisory” and
inserting in lieu thereof the words “Consumption of Animal
Foods that are Raw, Undercooked, or Not Otherwise Processed
to Eliminate Pathogens”;

On page three, section 2.1.i.1.C., after the words ‘in
compliance with’, by striking out the words ‘Chapter 6' and
inserting in lieu thereof the words ‘Chapter 16';
On page five, section 5.3, in two places, by striking out the words 'subsection 5.3' and inserting in lieu thereof the words 'subsection 5.4'; and,

On page six, line three, immediately preceding the words 'Food Establishment Advisory Board', by striking out the words '§ 16-17-6' and inserting in lieu thereof the words '§64-17-6'.

(d) The legislative rule filed in the state register on the fourth day of August, one thousand nine hundred ninety-nine, authorized under the authority of section twenty-three, article four-c, chapter sixteen of this code, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of October, one thousand nine hundred ninety-nine, relating to the division of health (fire department rapid response services, 64 CSR 44), is authorized with the following amendment:

"On page seven, following subsection 5.9, by inserting a new subsection, designated subsection 5.10, to read as follows:

'5.10. Public Access. Each fire department rapid response system shall provide for a publicly listed telephone number to receive calls for service from the public within its regular operating area, except as specified in subdivision 5.10.b of this rule.

5.10.a. The number shall be answered on a twenty-four-hour basis.

5.10.b. Exception. Any fire department rapid response system that, according to its written policy, does not respond to calls from the general public but responds only to calls from a unique population, such as the population of a state institution, an industrial plant, between specified health care facilities, or a university, is not required to provide a publicly listed tele-
phone number. The agency shall provide for a telephone number and shall make that number known to the unique population it services. The number shall be required to be answered during all periods when that population may require service."

(e) The legislative rule filed in the state register on the first day of December, one thousand nine hundred ninety-eight, authorized under the authority of section eight, article three-c, chapter sixteen of this code, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-ninth day of April, one thousand nine hundred ninety-nine, relating to the division of health (AIDS-related medical testing and confidentiality, 64 CSR 64), is authorized with the following amendment:

"On page six, subsection 5.1, following the words ‘initial period of time’, by striking the words ‘not to exceed three (3) months’.""

(f) The legislative rule filed in the state register on the fourth day of August, one thousand nine hundred ninety-nine, authorized under the authority of section two-a, article five-a, chapter sixteen of this code, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of October, one thousand nine hundred ninety-nine, relating to the division of health (cancer registry, 64 CSR 68), is authorized with the following amendment:

"On page five, immediately following subsection 5.4, by adding a new subsection, designated subsection 5.5, to read as follows:
5.5. The West Virginia Cancer Registry may release case data to cancer researchers for the purposes of cancer prevention, control and research."

(g) The legislative rule filed in the state register on the fourth day of August, one thousand nine hundred ninety-nine, authorized under the authority of section nine, article one, chapter sixteen of this code, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-ninth day of December, one thousand nine hundred ninety-nine, relating to the division of health (behavioral health consumer rights, 64 CSR 74), is authorized.

(h) The legislative rule filed in the state register on the fifth day of August, one thousand nine hundred ninety-nine, authorized under the authority of section nine-a, article one, chapter sixteen of this code, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the nineteenth day of January, two thousand, relating to the division of health (public water systems design standards, 64 CSR 77), is authorized.

§64-5-3. Child support enforcement division.

(a) The legislative rule filed in the state register on the sixth day of August, one thousand nine hundred ninety-nine, under the authority of section nine, article two, chapter forty-eight-a of this code, relating to the bureau for child support enforcement (providing information to credit reporting agencies, 78 CSR 14), is repealed.

(b) The legislative rule filed in the state register on the sixth day of August, one thousand nine hundred ninety-nine, under the authority of section nine, article two, chapter forty-eight-a of this code, relating to the bureau for child support enforcement (guidelines for child support awards, 78 CSR 16), is repealed.
AN ACT to amend and reenact article six, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or 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 certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; authorizing the division of corrections to promulgate a legislative rule relating to the monitoring of inmate mail; and authorizing the state police to promulgate a legislative rule relating to the West Virginia state police career progression system.

Be it enacted by the Legislature of West Virginia:

That article six, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 6. AUTHORIZATION FOR DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY TO PROMULGATE LEGISLATIVE RULES.

§64-6-1. Division of corrections.

§64-6-2. State police.

§64-6-1. Division of corrections.

The legislative rule filed in the state register on the fifth day of August, one thousand nine hundred ninety-nine, under the authority of section eighteen, article one, chapter twenty-five of this code, modified by the division of corrections to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of October, one thousand nine hundred ninety-nine, relating to the division of corrections (monitoring of inmate mail, 90 CSR 7), is authorized.

§64-6-2. State police.

The legislative rule filed in the state register on the thirtieth day of July, one thousand nine hundred ninety-nine, authorized under the authority of section five, article two, chapter fifteen of this code, modified by the state police to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirtieth day of August, one thousand nine hundred ninety-nine, relating to the state police (West Virginia state police career progression system, 81 CSR 3), is authorized.

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[Passed March 11, 2000; in effect from passage. Approved by the Governor.]
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 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 certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; authorizing the alcohol beverage control commissioner to promulgate a legislative rule relating to retail licensee operations; authorizing the alcohol beverage control commissioner to promulgate a legislative rule relating to private club licensing; authorizing the insurance commissioner to promulgate a legislative rule relating to Medicare supplement insurance; authorizing the insurance commissioner to promulgate a legislative rule relating to continuing education for insurance agents; authorizing the insurance commissioner to promulgate a legislative rule relating to quality assurance standards for prepaid limited health service organizations; authorizing the lottery commission to promulgate a legislative rule relating to the state lottery; authorizing the lottery commission to promulgate a legislative rule relating to limited gaming facilities; authorizing the racing commission to promulgate a legislative rule relating to thoroughbred racing; authorizing the racing commission to promulgate a legislative rule relating to greyhound racing; and authorizing the racing commission to promulgate a legislative rule relating to pari-mutual wagering.”

Be it enacted by the Legislature of West Virginia:
That article seven, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF TAX AND REVENUE TO PROMULGATE LEGISLATIVE RULES.

§64-7-1. Alcohol beverage control commissioner.
§64-7-2. Insurance commissioner.
§64-7-3. Lottery commission.
§64-7-4. Racing commission.

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

(a) The legislative rule filed in the state register on the sixth day of August, one thousand nine hundred ninety-nine, under the authority of section six, article three-a, chapter sixty of this code, modified by the alcohol beverage control commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the ninth day of November, one thousand nine hundred ninety-nine, relating to the alcohol beverage control commissioner (retail licensee operations, 175 CSR 1), is authorized.

(b) The legislative rule filed in the state register on the sixth day of August, one thousand nine hundred ninety-nine, under the authority of section ten, article seven, chapter sixty of this code, modified by the alcohol beverage control commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of December, one thousand nine hundred ninety-nine, relating to the alcohol beverage control commissioner (private club licensing, 175 CSR 2), is authorized, with the following amendments:

On page one, section 2.1, line one, following the word "beer", and the comma, by inserting the words "including barley beer" followed by a comma;
On page one, section 2.1, line one, following the word “wine”, by inserting a comma and the words “including barley wine” followed by a comma;

Beginning on page five, section 3.2.1.c, line two, by striking out the words “W.Va. Code §60-7-2(a), (1), (2)”, and inserting in lieu thereof the words “W.Va. Code §60-7-2(a)(1) and W.Va. Code §60-7-2(a)(2)”;

On page nine, section 3.4.2, beginning on line one, following the words “specified in”, by striking out the words “W.Va. Code §60-8-6”, and inserting in lieu thereof the words “W.Va. Code §60-7-6(a)”;  

On page twelve, section 4.11.5, line two, following the words “ten (10:00)”, by striking out the words “p.m. cold”, and inserting in lieu thereof the words “p.m. Cold”;  

And,  

On page thirteen, section 4.14.3, line one, following the word “Commissioner” and the comma, by inserting the word “receive”.

§64-7-2. Insurance commissioner.

(a) The legislative rule filed in the state register on the fourteenth day of May, one thousand nine hundred ninety-nine, authorized by section ten, article two, chapter thirty-three of this code, relating to the insurance commissioner (Medicare supplement insurance, 114 CSR 24), is authorized.

(b) The legislative rule filed in the state register on the twelfth day of July, one thousand nine hundred ninety-nine, authorized by section ten, article two, chapter thirty-three of this code, relating to the insurance commissioner (continuing education for insurance agents, 114 CSR 42), is authorized.
(c) The legislative rule filed in the state register on the
twelfth day of July, one thousand nine hundred ninety-nine,
authorized by section ten, article two, chapter thirty-three of
this code, relating to the insurance commissioner (quality
assurance standards for prepaid limited health service organiza-
tions, 114 CSR 56), is authorized.

$§64-7-3. Lottery commission.$

(a) The legislative rule filed in the state register on the
thirtieth day of July, one thousand nine hundred ninety-nine,
under the authority of section five, article twenty-two, chapter
twenty-nine of this code, modified by the lottery commission to
meet the objections of the legislative rule-making review
committee and refiled in the state register on the seventeenth
day of December, one thousand nine hundred ninety-nine,
relating to the lottery commission (state lottery rules, 179 CSR
1), is authorized.

(b) The legislative rule filed in the state register on the sixth
day of August, one thousand nine hundred ninety-nine, under
the authority of section five, article twenty-five, chapter twenty-
nine of this code, modified by the lottery commission to meet
the objections of the legislative rule-making review committee
and refiled in the state register on the seventeenth day of
December, one thousand nine hundred ninety-nine, relating to
the lottery commission (limited gaming facilities, 179 CSR 4),
is authorized.

$§64-7-4. Racing commission.$

(a) The legislative rule filed in the state register on the
fourth day of June, one thousand nine hundred ninety-nine,
under the authority of section six, article twenty-three, chapter
nineteen of this code, modified by the racing commission to
meet the objections of the legislative rule-making review
committee and refiled in the state register on the tenth day of
August, one thousand nine hundred ninety-nine, relating to the
racing commission (thoroughbred racing, 178 CSR 1), is
authorized.

(b) The legislative rule filed in the state register on the
fourth day of June, one thousand nine hundred ninety-nine,
under the authority of section six, article twenty-three, chapter
nineteen of this code, modified by the racing commission to
meet the objections of the legislative rule-making review
committee and refiled in the state register on the sixth day of
August, one thousand nine hundred ninety-nine, relating to the
racing commission (greyhound racing, 178 CSR 2), is autho-
rized.

(c) The legislative rule filed in the state register on the
fourth day of June, one thousand nine hundred ninety-nine,
under the authority of section six, article twenty-three, chapter
nineteen of this code, modified by the racing commission to
meet the objections of the legislative rule-making review
committee and refiled in the state register on the sixth day of
August, one thousand nine hundred ninety-nine, relating to the
racing commission (pari-mutual wagering, 178 CSR 5), is
authorized.

CHAPTER 166

(Com. Sub. for H. B. 4258 — By Delegates Hunt, Linch,
Compton, Jenkins, Faircloth and Riggs)

[Passed March 10, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article eight, chapter
sixty-four of the code of West Virginia, one thousand nine
hundred thirty-one, as amended; and to further amend said
article by adding thereto a new section, designated section two, 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 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 certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; authorizing the division of motor vehicles to promulgate a legislative rule relating to administrative due process; authorizing the division of motor vehicles to promulgate a legislative rule relating to motor vehicle dealers, wrecker/dismantler/rebuilders and license services, automobile auctions, vehicle leasing companies, daily passenger rental car businesses and administrative due process; authorizing the division of highways to promulgate a legislative rule relating to the construction and reconstruction of state roads; authorizing the division of highways to promulgate a legislative rule relating to traffic and safety; and authorizing the division of highways to promulgate a legislative rule relating to the transportation of hazardous wastes upon the roads and highways.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. AUTHORIZATION FOR DEPARTMENT OF TRANSPORTATION TO PROMULGATE LEGISLATIVE RULES.

§64-8-1. Division of motor vehicles.
§64-8-2. Division of highways.

§64-8-1. Division of motor vehicles.

(a) The legislative rule filed in the state register on the fifth day of August, one thousand nine hundred ninety-nine, authorized under the authority of section nine, article two, chapter seventeen-a of this code, modified by the division of motor vehicles to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of September, one thousand nine hundred ninety-nine, relating to the division of motor vehicles (administrative due process, 91 CSR 1), is authorized.

(b) The legislative rule filed in the state register on the fifth day of August, one thousand nine hundred ninety-nine, authorized under the authority of section nine, article two, chapter seventeen-a of this code, modified by the division of motor vehicles to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of September, one thousand nine hundred ninety-nine, relating to the division of motor vehicles (motor vehicle dealers, wrecker/dismantler/rebuilders and license services, automobile auctions, vehicle leasing companies, daily passenger rental car businesses and administrative due process, 91 CSR 6), is authorized.

§64-8-2. Division of highways.

(a) The legislative rule filed in the state register on the sixteenth day of November, one thousand nine hundred ninety-eight, under the authority of section eight, article two-a,
chapter seventeen of this code, modified by the division of highways to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-ninth day of July, one thousand nine hundred ninety-nine, relating to the division of highways (construction and reconstruction of state roads, 157 CSR 3), is authorized with the following amendment:

On page one hundred two, at the end of paragraph 11.6.e.4 by adding thereto a new subdivision 11.6.f to read as follows:

11.6.f. Substitution of Surety Bond for Retainages

The contractor may at any time withdraw the amounts retained by the Division in accordance with subdivision 11.6.b and substitute therefore a surety bond, in a form acceptable to the Commissioner, in the amount of two percent of the contract bid amount plus all change order amounts approved as of the time of tender of the surety bond. This surety bond shall be in addition to, or an increase of, the performance bond required in subsection 11.5.5. of this rule. The surety bond shall be conditioned upon the payment by the contractor of all applicable taxes imposed by West Virginia Code §11-13-1 et seq.; §11-21-1 et seq. and §11-24-1 et seq. as amended, and any applicable county and municipal business and occupation taxes. This surety bond will not be released, nor will final payment be made on the contract, until the Division receives from the Commissioner of Tax and Revenue, and the county commission or municipality, where applicable, a certificate declaring that all taxes levied or accrued have been paid or provided for.

(b) The legislative rule filed in the state register on the twenty-third day of September, one thousand nine hundred ninety-eight, under the authority of section eight, article two-a, chapter seventeen of this code, modified by the division of highways to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirty-
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 or 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 certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by
the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; authorizing the commissioner of agriculture to promulgate a legislative rule relating to the marketing of eggs; authorizing the athletic commission to promulgate a legislative rule relating to the commission; authorizing the auditor to promulgate a legislative rule relating to standards for requisitions for payment issued by state officers on the auditor; authorizing the auditor to promulgate a legislative rule relating to the transaction fee and rate structure; authorizing the elections commission to promulgate a legislative rule relating to the regulation of campaign finance; authorizing the family protection services board to promulgate a legislative rule relating to the licensure of domestic violence and perpetrator intervention programs; authorizing the board of registration for foresters to promulgate a legislative rule relating to the registration of foresters; authorizing the governor's committee on crime, delinquency and correction to promulgate a legislative rule relating to law enforcement training standards; authorizing the board of medicine to promulgate a legislative rule relating to fees for services rendered by the board; authorizing the nursing home administrators licensing board to promulgate a legislative rule relating to the board; authorizing the board of physical therapy to promulgate a legislative rule relating to general provisions; authorizing the board of examiners of registered professional nurses to promulgate a legislative rule relating to policies and criteria for the evaluation and accreditation of colleges, departments or schools of nursing; authorizing the board of respiratory care to promulgate a legislative rule relating to continuing education requirements; authorizing the board of respiratory care to promulgate a legislative rule relating to disciplinary action; authorizing the secretary of state to promulgate a legislative rule relating to filing fees for organizations; authorizing the secretary of state to promulgate a legislative rule relating to the elimination
of precinct registration books; authorizing the traumatic brain and spinal cord injury rehabilitation fund board to promulgate a legislative rule relating to the traumatic brain and spinal cord injury rehabilitation fund; authorizing the board of veterinary medicine to promulgate a legislative rule relating to standards of practice; and 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.

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.
§64-9-3. Auditor and department of administration.
§64-9-5. Board of registration for foresters.
§64-9-6. Family protection services board.
§64-9-7. Governor's committee on crime, delinquency and correction.
§64-9-8. Board of medicine.
§64-9-10. Board of physical therapy.
§64-9-11. Board of examiners of registered professional nurses.
§64-9-12. Board of respiratory care.
§64-9-16. Board of barbers and cosmetologists.

§64-9-1. Commissioner of agriculture.

1 The legislative rule filed in the state register on the thirtieth day of June, one thousand nine hundred ninety-nine, authorized under the authority of section ten, article ten-a, chapter nineteen
of this code, relating to the commissioner of agriculture
(marketing of eggs, 61 CSR 7A), is authorized.


The legislative rule filed in the state register on the eighth
day of July, one thousand nine hundred ninety-nine, under the
authority of section twenty-four, article five-a, chapter twenty-
nine of this code, modified by the athletic commission to meet
the objections of the legislative rule-making review committee
and refiled in the state register on the twenty-fourth day of
January, two thousand, relating to the athletic commission
(administrative rules and regulations of the West Virginia state
athletic commission, 177 CSR 1), is authorized.

§64-9-3. Auditor and department of administration.

(a) The legislative rule filed in the state register on the third
day of August, one thousand nine hundred ninety-nine, under
the authority of section ten, article three, chapter twelve of this
code, modified by the auditor to meet the objections of the
legislative rule-making review committee and refiled in the
state register on the thirty-first day of August, one thousand
nine hundred ninety-nine, relating to the auditor (standards for
requisitions for payment issued by state officers on the auditor,
155 CSR 1), is authorized with the following amendments:

On page two, section 3.7, by striking out the words ‘Those
invoices which require original certification are’ and inserting
in lieu thereof the following:

‘These invoices require two original certifications, one of
which must be the Chief Financial Officer, Department/Agency
Administrator, or as determined by the Auditor in emergency
situations’; and

On page two, by striking out all of subsection 3.7.a. and
inserting in lieu thereof a new subdivision 3.7.a to read as
follows:
3.7.a. Electronically reproduced invoices sent by the invoicing vendor;.”

(b) The legislative rule filed in the state register on the twenty-seventh day of July, one thousand nine hundred ninety-nine, under the authority of section ten-c, article three, chapter twelve of this code, modified by the auditor to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of September, one thousand nine hundred ninety-nine, relating to the auditor (transaction fee and rate structure, 155 CSR 4), is authorized with the following amendment:

“On page two, subsection 3.2, after the last sentence, by adding the following: ‘The fee shall continue in effect until December 31, 2001’.”


The legislative rule filed in the state register on the sixth day of August, one thousand nine hundred ninety-nine, under the authority of section five, article one-a, chapter three of this code, modified by the elections commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of September, one thousand nine hundred ninety-nine, relating to the elections commission (regulation of campaign finance, 146 CSR 3), is authorized with the following amendments:

On page two, after section 2.5 by striking out subsections 2.6 through 2.10 inclusive and inserting in lieu thereof the following new subsections to read as follows:

2.6. “Contribution” means a gift subscription, assessment, payment for services, dues, advance, donation, pledge, contract, agreement, forbearance or promise of money or other tangible thing of value, whether or not conditional or legally enforceable, or a transfer of money or other tangible thing of value to
a person, made for political purposes, as defined herein. An offer or tender of a contribution is not a contribution if expressly and unconditionally rejected before it is received or returned within thirty (30) days and not used during that time for political purposes. A contribution does not include volunteer personal services provided without compensation.

2.7. “Election” means any primary, general or special election conducted under the provisions of this code or under the charter of any municipality.

2.8. “Financial agent” means an individual designated to act on behalf of one candidate to conduct financial transactions for political purposes on behalf of that candidate.

2.9. “Grossly incomplete or grossly inaccurate” means that a financial statement as defined under West Virginia Code §3-8-5 is missing information required by West Virginia Code §3-8-1 et seq. and State Election Commission, Regulation of Campaign Finance, 146 CSR 3.

2.10. “Inaugural committee” includes any person, organization or group of persons soliciting or receiving contributions for the purpose of funding an inaugural event for an elected state official.

2.11. “Inaugural event” means any event or events held between the date of the general election for a state public office and a date ninety days after the date of the general election, whether the event is sponsored by the inaugural committee or the state political party committee representing the party of the elected official and for which the elected official is a prominent participant or for which solicitations of contributions include the name of the elected official in prominent display.

2.12. “Independent Expenditure” means an expenditure made by a person other than a candidate or committee for a communication which expressly advocates the election or
defeat of a clearly identified candidate but which is made
independently of a candidate’s campaign and which has not
been made with the cooperation or consent of, or in consulta-
tion with, or at the request or suggestion of, any candidate or
any of his or her agents or authorized committees.

2.13. “Necessary traveling and hotel expenses” means
mileage at a rate not to exceed the thirty-one cents per mile or
direct charges for transportation and itemized food and lodging
costs incurred specifically for the purpose of campaigning or
conducting the organizational, political or financial business of
a political committee or candidate’s campaign. The term does
not include the purchase cost of any vehicle, or expenditures for
traveling and hotel expenses incurred for activities which result
primarily in personal benefit and are not directly and specifi-
cally undertaken for political purposes.

2.14. “Nominal noncash expressions of appreciation”
means a token of appreciation, having a cash value of three
dollars ($3.00) or less, given to volunteer or paid campaign
workers following the close of the polls or within 30 days
thereafter.

2.15. “Occupation” means the principal work activity which
is described by a general term such as teacher, miner, business
executive, homemaker or doctor.

2.16. “Person” means an individual, partnership, commit-
tee, association, corporation, and any other organization or
group of persons.;

On page 3, subsection 2.8, the second line of the definition
after the words “to exceed the” by striking out the words
“current state-mandated reimbursement rate” and inserting in
lieu thereof the words “thirty-one cents”;

And,
On page 14, subsection 8.11 by striking out subsection s.11 in its entirety and inserting in lieu thereof the following new subsections 8.11 and 8.12 to read as follows:

8.11. Persons making independent expenditures shall report those expenditures according to West Virginia Code §3-8-2.

8.11.1. Each person who expends money as an independent expenditure for political purposes shall keep records of each expenditure.

8.11.2. Each person who expends money as an independent expenditure for political purposes shall file verified financial statements as public records.

8.11.3. The financial statements shall be filed as required by the filing provision for all other campaign financial reporting.

8.12. Any independent expenditure made or debt that is incurred for a communication after the eleventh day but more than twelve hours before the day of any election in accordance with the following procedures:

8.12.1. The report shall be reported on the West Virginia campaign financial statement for individuals making independent expenditures to support or oppose candidates, political parties, or ballot issues. The forms are available from the secretary of state, county clerks and municipal election officials. The forms are also available on the West Virginia Secretary of State website, www.state.wv.us/SOS/. (The format may be different on the website.)

8.12.2. The report shall be made to the proper filing officer.

8.12.2.a. For candidates running for statewide, legislative or multi-county offices or committees supporting or
opposing candidates or issues on the ballot in more than one county, report is filed with the secretary of state.

8.12.2.b. For candidates running for county or single-county offices (except candidates for legislative offices who file with the secretary of state) or committees supporting or opposing candidates or issues on the ballot in only one county, report is filed with the county clerk.

8.12.2.c. For candidates running for municipal offices or committees supporting or opposing candidates or issues on the ballot in a municipal election, report is filed with the city clerk/recorder.

8.12.3. The report shall be by hand-delivery, facsimile or other means to assure receipt by the proper filing officer within twenty-four hours after the expenditure is made or debt is incurred for a communication.

§64-9-5. Board of registration for foresters.

The legislative rule filed in the state register on the fifth day of August, one thousand nine hundred ninety-nine, under the authority of section six, article nineteen, chapter thirty of this code, modified by the board of registration for foresters to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-ninth day of September, one thousand nine hundred ninety-nine, relating to the board of registration for foresters (registration of foresters, 200 CSR 1), is authorized with the following amendment:

"On page one, section 2.1, line two, after the word 'Foresters' by inserting the words 'or a master's degree in forestry from a program accredited by the Society of American Foresters'."

§64-9-6. Family protection services board.
The legislative rule filed in the state register on the fifth day of August, one thousand nine hundred ninety-nine, under the authority of section four, article two-c, chapter forty-eight of this code, modified by the family protection services board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of December, one thousand nine hundred ninety-nine, relating to the family protection services board (licensure of domestic violence and perpetrator intervention programs, 191 CSR 2), is authorized.

§64-9-7. Governor’s committee on crime, delinquency and correction.

The legislative rule filed in the state register on the fourth day of August, one thousand nine hundred ninety-nine, authorized under the authority of section three, article twenty-nine, chapter thirty of this code, modified by the governor’s committee on crime, delinquency and correction to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of January, two thousand, relating to the governor’s committee on crime, delinquency and correction (law enforcement training standards, 149 CSR 2), is authorized.

§64-9-8. Board of medicine.

The legislative rule filed in the state register on the twenty-first day of July, one thousand nine hundred ninety-nine, under the authority of section seven, article three, chapter thirty of this code, relating to the board of medicine (fees for services rendered by the board of medicine, 11 CSR 4), is authorized.


The legislative rule filed in the state register on the twentieth day of July, one thousand nine hundred ninety-nine, under the authority of section seven, article twenty-five, chapter thirty
of this code, modified by the nursing home administrators
licensing board to meet the objections of the legislative
rule-making review committee and refiled in the state register
on the twenty-third day of August, one thousand nine hundred
ninety-nine, relating to the nursing home administrators
licensing board (rules of the nursing home administrators
licensing board, 21 CSR 1), is authorized with the following
amendment:

"On page thirteen, subdivision 6.3.2, in the third sentence,
following the words 'to the Board', by striking out the words
'within 30 days' and inserting in lieu thereof the words 'within
20 days'."

§64-9-10. Board of physical therapy.

The legislative rule filed in the state register on the fifth day
of August, one thousand nine hundred ninety-nine, under the
authority of section five, article twenty, chapter thirty of this
code, modified by the board of physical therapy to meet the
objections of the legislative rule-making review committee and
refiled in the state register on the twenty-ninth day of Decem-
ber, one thousand nine hundred ninety-nine, relating to the
board of physical therapy (general provisions, 16 CSR 1), is
authorized.

§64-9-11. Board of examiners of registered professional nurses.

The legislative rule filed in the state register on the fifth day
of August, one thousand nine hundred ninety-nine, under the
authority of section four, article seven, chapter thirty of this
code, modified by the board of examiners of registered profes-
sional nurses to meet the objections of the legislative
rule-making review committee and refiled in the state register
on the first day of November, one thousand nine hundred
ninety-nine, relating to the board of examiners of registered
professional nurses (policies and criteria for the evaluation and
§64-9-12. Board of respiratory care.

(a) The legislative rule filed in the state register on the fourth day of August, one thousand nine hundred ninety-nine, under the authority of section five, article thirty-four, chapter thirty of this code, modified by the board of respiratory care to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of November, one thousand nine hundred ninety-nine, relating to the board of respiratory care (continuing education requirements, 30 CSR 3), is authorized.

(b) The legislative rule filed in the state register on the eighth day of September, one thousand nine hundred ninety-nine, under the authority of section six, article thirty-four, chapter thirty of this code, modified by the board of respiratory care to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of November, one thousand nine hundred ninety-nine, relating to the board of respiratory care (disciplinary action, 30 CSR 4), is authorized.


(a) The legislative rule filed in the state register on the sixth day of August, one thousand nine hundred ninety-nine, authorized under the authority of section five, article six-c, chapter forty-six-a of this code, modified by the secretary of state to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of December, one thousand nine hundred ninety-nine, relating to the secretary of state (filing fees for organizations, 153 CSR 15), is authorized.

The legislative rule filed in the state register on the twenty-seventh day of April, one thousand nine hundred ninety-nine, under the authority of section three, article ten-k, chapter eighteen of this code, modified by the traumatic brain and spinal cord injury rehabilitation fund board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of July, one thousand nine hundred ninety-nine, relating to the traumatic brain and spinal cord injury rehabilitation fund board (traumatic brain and spinal cord injury rehabilitation fund, 197 CSR 1), is authorized.


The legislative rule filed in the state register on the sixth day of August, one thousand nine hundred ninety-nine, authorized under the authority of section four, article ten, chapter thirty of this code, modified by the board of veterinary medicine to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of October, one thousand nine hundred ninety-nine, relating to the board of veterinary medicine (standards of practice, 26 CSR 4), is authorized.

§64-9-16. Board of barbers and cosmetologists.
The legislative rule filed in the state register on the twenty-sixth day of March, one thousand nine hundred ninety-nine, authorized under the authority of section one, article twenty-seven, chapter thirty of this code relating to the board of barbers and cosmetologists (procedures, criteria, and curricular for examination and licensure of barbers, cosmetologists, manicurists and aestheticians, 3 CSR 1), is reauthorized with the following amendments:

On page two, section five, by adding a new subsection, to read as follows:

5.3. Every student has the option of completing a course of study for:

(a) A one thousand eight hundred hour barbering course, exclusive of permanent waving license; or

(b) The existing course of study consisting of at least two thousand clock hours divided as specified in table 3-1A of this rule and subdivided at the discretion of the faculty of the school.

CHAPTER 168

(Com. Sub. for S. B. 310 — By Senators Ross, Anderson, Minard, Snyder, Unger and Minear)

[Passed March 18, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article ten, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or
authorization for the promulgation of certain legislative rules by various executive or 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 certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; authorizing the development office to promulgate a legislative rule relating to the West Virginia office of coalfield community development; authorizing the development office to promulgate a legislative rule relating to the general administration of the West Virginia capital company act; authorizing the development office to promulgate a legislative rule relating to the workforce development initiative program; authorizing the division of labor to promulgate a legislative rule relating to the amusement rides and amusement attractions safety act; authorizing the division of labor to promulgate a legislative rule relating to steam boiler operation; authorizing the division of natural resources to promulgate a legislative rule relating to the revocation of hunting and fishing licenses; authorizing the division of natural resources to promulgate a legislative rule relating to boating; authorizing the division of natural resources to promulgate a legislative rule relating to special motorboating; authorizing the division of natural resources to promulgate a legislative rule relating to the public use of West Virginia state parks, state forests and wildlife management areas under the division; authorizing the division of natural resources to promulgate a legislative rule relating to prohibitions when hunting and trapping; authorizing the division of natural resources to promulgate a legislative rule relating to special bear hunting; authorizing the division of
natural resources to promulgate a legislative rule relating to the recycling assistance grant program; authorizing the division of natural resources to promulgate a legislative rule relating to general trapping; authorizing the division of natural resources to promulgate a legislative rule relating to the litter control grant program; authorizing the division of natural resources to promulgate a legislative rule relating to special fishing; authorizing the division of natural resources to promulgate a legislative rule relating to lifetime hunting, trapping and fishing licenses; and authorizing the division of natural resources to promulgate a legislative rule relating to the issuance of hunting, trapping and fishing licenses by telephone and/or other electronic methods.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. AUTHORIZATION FOR BUREAU OF COMMERCE TO PROMULGATE LEGISLATIVE RULES.

§64-10-1. Development office.
§64-10-2. Division of labor.
§64-10-3. Division of natural resources.

§64-10-1. Development office.

(a) The legislative rule filed in the state register on the eighteenth day of October, one thousand nine hundred ninety-nine, under the authority of section twelve, article two-a, chapter five-b of this code, relating to the development office (West Virginia office of coalfield community development, 145 CSR 8), is authorized.

(b) The legislative rule filed in the state register on the sixth day of August, one thousand nine hundred ninety-nine, under the authority of section five, article one, chapter five-e of this code, modified by the West Virginia development office to
meet the objections of the legislative rule-making review committee and refiled in the state register on the seventeenth day of September, one thousand nine hundred ninety-nine, relating to the economic development authority (general administration of the West Virginia capital company act; establishment of the application procedures to implement the act, 117 CSR 1), is authorized.

(c) The legislative rule filed in the state register on the thirteenth day of October, one thousand nine hundred ninety-nine, under the authority of section five, article three-d, chapter eighteen-b of this code, relating to the development office (workforce development initiative program, 145 CSR 9), is authorized.

§64-10-2. Division of labor.

(a) The legislative rule filed in the state register on the fourth day of August, one thousand nine hundred ninety-nine, authorized under the authority of section three, article ten, chapter twenty-one of this code, modified by the division of labor to meet the objections of the legislative rule-making review committee and refiled in the state register on the third day of December, one thousand nine hundred ninety-nine, relating to the division of labor (amusement rides and amusement attractions safety act, 42 CSR 17), is authorized.

(b) The legislative rule filed in the state register on the fourth day of August, one thousand nine hundred ninety-nine, authorized under the authority of section seven, article three, chapter twenty-one of this code, modified by the division of labor to meet the objections of the legislative rule-making review committee and refiled in the state register on the third day of December, one thousand nine hundred ninety-nine, relating to the division of labor (steam boiler inspection, 42 CSR 3), is authorized.

§64-10-3. Division of natural resources.
(a) The legislative rule filed in the state register on the fifth day of August, one thousand nine hundred ninety-nine, authorized under the authority of section seven, article one, chapter twenty of this code, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of September, one thousand nine hundred ninety-nine, relating to the division of natural resources (revocation of hunting and fishing licenses, 58 CSR 23), is authorized.

(b) The legislative rule filed in the state register on the fifth day of August, one thousand nine hundred ninety-nine, authorized under the authority of section twenty-three, article seven, chapter twenty of this code, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of September, one thousand nine hundred ninety-nine, relating to the division of natural resources (boating, 58 CSR 25), is authorized.

(c) The legislative rule filed in the state register on the eighth day of September, one thousand nine hundred ninety-eight, authorized under the authority of section twenty-three, article seven, chapter twenty of this code, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourth day of May, one thousand nine hundred ninety-nine, relating to the division of natural resources (special motorboating, 58 CSR 27), is authorized with the following amendments:

"On page two, subdivision 3.1.1 after the word "Engineers;" by striking out the word "and";"

And,
On page two, subdivision 3.1.2 at the end of the subdivision by changing the period to a semicolon and adding the word "and" and a new subdivision, designated 3.1.3, to read as follows:

3.1.3. Beginning at the mouth of Fishing Creek at its confluence with the Ohio River and extending upstream approximately six-tenths (0.6) of a mile to the Route 2 Bridge. This area is situated entirely within the boundaries of the City of New Martinsville, West Virginia. The city of New Martinsville, West Virginia, is responsible for purchasing, placing and maintaining the No Wake Zone buoys and informational signs. Signs shall meet the approval of the director. Any buoys or other structures placed in the water shall conform to the U.S. Coast Guard Standards for Inland Rivers and, if they would interfere with commercial river traffic, be approved by the U.S. Army Corps of Engineers."

(d) The legislative rule filed in the state register on the thirtieth day of July, one thousand nine hundred ninety-nine, authorized under the authority of section two, article five, chapter twenty of this code, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of August, one thousand nine hundred ninety-nine, relating to the division of natural resources (public use of West Virginia state parks, state forests, wildlife management areas under the division of natural resources, 58 CSR 31), is authorized, with the following amendment:

"On page three, section two, subsection 2.21, following the comma after the words 'Berkeley Springs,' by inserting the words 'Brush Creek Falls day-use area managed by Pipestem State Park,' followed by a comma."

(e) The legislative rule filed in the state register on the eighth day of September, one thousand nine hundred ninety-eight, authorized under the authority of section seven,
article one, chapter twenty of this code, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourth day of May, one thousand nine hundred ninety-nine, relating to the division of natural resources (prohibitions when hunting and trapping, 58 CSR 47), is authorized.

(f) The legislative rule filed in the state register on the fifteenth day of January, one thousand nine hundred ninety-nine, authorized under the authority of section seven, article one, chapter twenty of this code, relating to the division of natural resources (special bear hunting, 58 CSR 48), is authorized.

(g) The legislative rule filed in the state register on the sixth day of August, one thousand nine hundred ninety-nine, authorized by section five-a, article eleven, chapter twenty of this code, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of December, one thousand nine hundred ninety-nine, relating to the division of natural resources (recycling assistance grant program, 58 CSR 5) is authorized, with the following amendment:

"On page four, subsection 4.1., in the first sentence after the word "through" by striking out the words "consultation with" and inserting in lieu thereof the words "notification of";

On page four, subsection 4.1., in the second sentence after the word "partnerships" by adding the word "corporations";

On page four, subsection 4.1., in the third sentence after the words "for the" by adding the words "applicant to receive priority for a grant";

And,
On page fourteen, subsection 9.1., in the first sentence after the word “industry” by adding the words “solid waste industry”.

(h) The legislative rule filed in the state register on the twentieth day of July, one thousand nine hundred ninety-nine, authorized by section seven, article one, chapter twenty of this code, relating to the division of natural resources (general trapping regulations, 58 CSR 53), is authorized.

(i) The legislative rule filed in the state register on the sixth day of August, one thousand nine hundred ninety-nine, authorized under the authority of section twenty-five, article seven, chapter twenty of this code, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of December, one thousand nine hundred ninety-nine, relating to the division of natural resources (litter control grant program, 58 CSR 6), is authorized.

(j) The legislative rule filed in the state register on the twentieth day of July, one thousand nine hundred ninety-nine, authorized under the authority of section seven, article one, chapter twenty of this code, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirtieth day of August, one thousand nine hundred ninety-nine, relating to the division of natural resources (special fishing, 58 CSR 61), is authorized.

(k) The legislative rule filed in the state register on the fourteenth day of June, one thousand nine hundred ninety-nine, authorized under the authority of section seven, article one, chapter twenty of this code, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of July, one thousand nine hundred ninety-nine, relating to the division of natural resources (lifetime hunting, trapping and fishing licenses, 58 CSR 67), is authorized.
The legislative rule filed in the state register on the twentieth day of July, one thousand nine hundred ninety-nine, authorized under the authority of section seven, article one, chapter twenty of this code, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirtieth day of August, one thousand nine hundred ninety-nine, relating to the division of natural resources (issuance of hunting, trapping and fishing licenses by telephone and other electronic methods, 58 CSR 68), is authorized.
and discharge the duties of his or her office, or is unavailable, then the president of the Senate shall act as governor, and if the president of the Senate, for any of the reasons specified in the constitution, is not able to exercise the powers and discharge the duties of the office of governor, or is unavailable, then the speaker of the House of Delegates shall act as governor, and if the speaker of the House of Delegates, for any of the reasons specified in the constitution, is not able to exercise and discharge the duties of the office of governor, or is unavailable, then the attorney general, the state auditor, and resident ex-governors of this state, in inverse order of service, shall, in the order named, if the preceding named officers be unavailable, exercise the powers and discharge the duties of the office of governor until a new governor is elected and qualified, or until a preceding named officer becomes available.

(b) The Legislature recognizes that pursuant to the provisions of subsection (a) of this section, the president of the Senate is charged with the responsibility of first successor to the governor in the event the governor is unable to exercise the powers and discharge the duties of his or her office and in that regard, the president of the Senate is functioning similarly to a lieutenant governor. Therefore, the Legislature determines that the president of the Senate shall be additionally designated the title of “lieutenant governor” in acknowledgment of the president’s responsibility as first successor to the governor.

CHAPTER 170

(Com. Sub. for H. B. 2776 — By Delegates Trump, Staton and Willison)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to taxation of real
property; and amending the definitions used in the managed timberland program to render ineligible for the managed timberland tax preference, property which is part an approved or exempted subdivision under a county planning ordinance and also to exclude from managed timberland treatment real estate which is restricted or zoned in a way that it cannot be used for the commercial production of timber.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.

§11-1C-2. Definitions.

1 For the purposes of this article, the following words shall have the meanings hereafter ascribed to them unless the context clearly indicates otherwise:

(a) "Timberland" means any surface real property except farm woodlots of not less than ten contiguous acres which is primarily in forest and which, in consideration of their size, has sufficient numbers of commercially valuable species of trees to constitute at least forty percent normal stocking of forest trees which are well distributed over the growing site.

(b) "Managed timberland" means surface real property, except farm woodlots, of not less than ten contiguous acres which is devoted primarily to forest use and which, in consideration of their size, has sufficient numbers of commercially valuable species of trees to constitute at least forty percent normal stocking of forest trees which are well distributed over the growing site, and that is managed pursuant to a plan provided for in section ten of this article. Provided, That none
of the following may be considered as managed timberland within the meaning of this article:

(1) Any tract or parcel of real estate, regardless of its size, which is part of any subdivision that is approved or exempted from approval pursuant to the provisions of a planning ordinance adopted under the provisions of article twenty-four of chapter eight of this code; or

(2) Any tract or parcel of real estate, regardless of its size, which is subject to a deed restriction, deed covenant or zoning regulation which limits the use of that real estate in a way that precludes the commercial production and harvesting of timber upon it.

(c) "Tax commissioner", "commissioner" or "tax department" means the state tax commissioner or a designee of the state tax commissioner.

(d) "Valuation commission" or "commission" means the commission created in section three of this article.

(e) "County board of education" or "board" means the duly elected board of education of each county.

(f) "Farm woodlot" means that portion of a farm in timber but may not include land used primarily for the growing of timber for commercial purposes except that Christmas trees, or nursery stock and woodland products, such as nuts or fruits harvested for human consumption, shall be considered farm products and not timber products.

(g) "Owner" means the person who is possessed of the freehold, whether in fee or for life. A person seized or entitled in fee subject to a mortgage or deed of trust securing a debt or liability is deemed the owner until the mortgagee or trust takes possession, after which such mortgagee or trustee shall be deemed the owner. A person who has an equitable estate of
49 freehold, or is a purchaser of a freehold estate who is in
50 possession before transfer of legal title is also deemed the
51 owner.

52 The definitions in subdivisions (f) and (g) of this section
53 shall apply to tax years beginning on or after the first day of
54 January, two thousand one.

CHAPTER 171

(Com. Sub. for H. B. 4753 — By Delegate Beane)

[Passed March 10, 2000; in effect July 1, 2000. Approved by the Governor.]

AN ACT to amend article nine, 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 eleven-a,
relating to protection of consumers who purchased manufactured
housing; required notification to consumers of inspection services
offered by the West Virginia manufactured housing construction
and safety board; requirements for written reports to consumers
of inspections conducted of manufactured housing; administrative
deerence to the West Virginia manufactured housing construc-
tion and safety board to inspect for defects in response to
consumer complaints; providing ninety-day deference period by
consumers to the board for alleged defects in manufactured
housing; and tolling the statute of limitations during the ninety-
day period.

Be it enacted by the Legislature of West Virginia:

That article nine, 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 eleven-
a, to read as follows:
§21-9-11a. Inspection of manufactured housing; deferral period for inspection and administrative remedies; notification to consumers of rights.

(a) Inspection of manufactured housing. — When a purchaser or owner of a manufactured home files a written complaint with the board alleging defects in the manufacture, construction or installation of the manufactured home, and any additional information the board considers necessary to conduct an investigation, the board shall within sixty days, to the extent feasible, cause an inspection of the manufactured home by one or more of its employees or person authorized and supervised by the board. The board shall provide the consumer a written report indicating whether the defects alleged by the complaint constitute violations of federal or state statutory or regulatory standards or good and customary manufacturing standards in the construction, design, manufacture or installation of the manufactured home. If the report indicates that the alleged defects do constitute any of these violations, the board shall take such further administrative action as provided for in this article including, but not limited to, ordering the manufacturer, dealer or contractor to correct any defects.

(b) Limited period for exclusive administrative remedy. — The board has a period of ninety days, commencing with the date of filing of the complaint, to investigate and take administrative action to order the correction of any defects in the manufacture or installation of a manufactured home. A purchaser or owner of a manufactured home may not file any civil action seeking monetary recovery or damages for claims related to or arising out of the manufacture, acquisition, sale or installation of the manufactured home, until the expiration of ninety days after the consumer or owner has filed a written complaint with the board. This period of exclusive administra-
tive authority may not prohibit the purchaser or owner of the
manufactured home from seeking equitable relief in any court
of competent jurisdiction to prevent or address an immediate
risk of personal injury or property damage. The filing of a
complaint under this article shall toll any applicable statutes of
limitation during the ninety-day period but only if the applica-
table limitation period has not expired prior to the filing of the
complaint.

(c) Notice of consumer rights. — Every dealer or contractor
who moves homes from one place to another shall provide
written notification to every purchaser of a manufactured home
of the availability of administrative assistance from the board
in investigating and ordering corrections of any defect in the
manufacture or installation of a manufactured home and the
period of exclusive jurisdiction given to the board. The board
determines to be beneficial to the purchaser or owner of the
manufactured home in exercising that person's rights under this
section.

CHAPTER 172

(Com. Sub. for S. B. 614 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed March 10, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, thirteen and
twenty-three, article three, chapter twenty-two of the code of
West Virginia, one thousand nine hundred thirty-one, as amended,
all relating to surface mining of coal; modifying provisions
relating to restoring mined land to its approximate original
contour; including commercial forestry as allowable post-mining
land use; and establishing requirements for bonding and release of bonds.

Be it enacted by the Legislature of West Virginia:

That sections three, thirteen and twenty-three, article three, 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 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-3. Definitions.


§22-3-23. Release of bond or deposits; application; notice; duties of director; public hearings; final maps on grade release.

§22-3-3. Definitions.

As used in this article, unless used in a context that clearly requires a different meaning, the term:

(a) "Adequate treatment" means treatment of water by physical, chemical or other approved methods in a manner so that the treated water does not violate the effluent limitations or cause a violation of the water quality standards established for the river, stream or drainway into which the water is released.

(b) "Affected area" means, when used in the context of surface mining activities, all land and water resources within the permit area which are disturbed or utilized during the term of the permit in the course of surface mining and reclamation activities. "Affected area" means, when used in the context of underground mining activities, all surface land and water resources affected during the term of the permit: (1) By surface operations or facilities incident to underground mining activities; or (2) by underground operations.
(c) "Adjacent areas" means, for the purpose of permit application, renewal, revision, review and approval, those land and water resources, contiguous to or near a permit area, upon which surface mining and reclamation operations conducted within a permit area during the life of the operations may have an impact. "Adjacent areas" means, for the purpose of conducting surface mining and reclamation operations, those land and water resources contiguous to or near the affected area upon which surface mining and reclamation operations conducted within a permit area during the life of the operations may have an impact.

(d) "Applicant" means any person who has or should have applied for any permit pursuant to this article.

(e) "Approximate original contour" means that surface configuration achieved by the backfilling and grading of the mined areas so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated: Provided, That water impoundments may be permitted pursuant to subdivision (8), subsection (b), section thirteen of this article: Provided, however, That minor deviations may be permitted in order to minimize erosion and sedimentation, retain moisture to assist revegetation, or to direct surface runoff.

(f) "Assessment officer" means an employee of the division, other than a surface mining reclamation supervisor, inspector or inspector-in-training, appointed by the director to issue proposed penalty assessments and to conduct informal conferences to review notices, orders and proposed penalty assessments.

(g) "Breakthrough" means the release of water which has been trapped or impounded, or the release of air into any
underground cavity, pocket or area as a result of surface mining operations.

(h) "Coal processing wastes" means earth materials which are or have been combustible, physically unstable or acid-forming or toxic-forming, which are wasted or otherwise separated from product coal, and slurried or otherwise transported from coal processing plants after physical or chemical processing, cleaning or concentrating of coal.

(i) "Director" means the director of the division of environmental protection or other person to whom the director has delegated authority or duties pursuant to sections six or eight, article one of this chapter.

(j) "Disturbed area" means an area where vegetation, topsoil or overburden has been removed or placed by surface mining operations, and reclamation is incomplete.

(k) "Division" means the division of environmental protection.

(l) "Imminent danger to the health or safety of the public" means the existence of a condition or practice, or any violation of a permit or other requirement of this article, which condition, practice or violation could reasonably be expected to cause substantial physical harm or death to any person outside the permit area before the condition, practice or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose the person to the danger during the time necessary for the abatement.

(m) "Minerals" means clay, coal, flagstone, gravel, limestone, manganese, sand, sandstone, shale, iron ore and any other metal or metallurgical ore.
(n) "Operation" means those activities conducted by an operator who is subject to the jurisdiction of this article.

(o) "Operator" means any person who is granted or who should obtain a permit to engage in any activity covered by this article and any rule promulgated under this article and includes any person who engages in surface mining or surface mining and reclamation operations, or both. The term shall also be construed in a manner consistent with the federal program pursuant to the federal Surface Mining Control and Reclamation Act of 1977, as amended.

(p) "Permit" means a permit to conduct surface mining operations pursuant to this article.

(q) "Permit area" means the area of land indicated on the approved proposal map submitted by the operator as part of the operator's application showing the location of perimeter markers and monuments and shall be readily identifiable by appropriate markers on the site.

(r) "Permittee" means a person holding a permit issued under this article.

(s) "Person" means any individual, partnership, firm, society, association, trust, corporation, other business entity or any agency, unit or instrumentality of federal, state or local government.

(t) "Prime farmland" has the same meaning as that prescribed by the United States secretary of agriculture on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, surface layer composition, susceptibility to flooding and erosion characteristics and which historically have been used for intensive agricultural purposes and as published in the federal register.
(u) "Surface mine", "surface mining" or "surface mining operations" means:

(1) Activities conducted on the surface of lands for the removal of coal, or, subject to the requirements of section fourteen of this article, surface operations and surface impacts incident to an underground coal mine, including the drainage and discharge from the mine. The activities include: Excavation for the purpose of obtaining coal, including, but not limited to, common methods as contour, strip, auger, mountaintop removal, box cut, open pit and area mining; the uses of explosives and blasting; reclamation; in situ distillation or retorting, leaching or other chemical or physical processing; the cleaning, concentrating or other processing or preparation and loading of coal for commercial purposes at or near the mine site; and

(2) The areas upon which the above activities occur or where the activities disturb the natural land surface. The areas also include any adjacent land, the use of which is incidental to the activities; all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of the activities and for haulage; and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to the activities: Provided, That the activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent of the tonnage of minerals removed for purposes of commercial use or sale, or coal prospecting subject to section seven of this article. Surface mining does not include any of the following:

(i) Coal extraction authorized pursuant to a government-financed reclamation contract;
(ii) Coal extraction authorized as an incidental part of development of land for commercial, residential, industrial or civic use; or

(iii) The reclamation of an abandoned or forfeited mine by a no cost reclamation contract.

(v) “Underground mine” means the surface effects associated with the shaft, slopes, drifts or inclines connected with excavations penetrating coal seams or strata and the equipment connected therewith which contribute directly or indirectly to the mining, preparation or handling of coal.

(w) “Significant, imminent environmental harm to land, air or water resources” means the existence of any condition or practice, or any violation of a permit or other requirement of this article, which condition, practice or violation could reasonably be expected to cause significant and imminent environmental harm to land, air or water resources. The term “environmental harm” means any adverse impact on land, air or water resources, including, but not limited to, plant, wildlife and fish, and the environmental harm is imminent if a condition or practice exists which is causing the harm or may reasonably be expected to cause the harm at any time before the end of the abatement time set by the director. An environmental harm is significant if that harm is appreciable and not immediately repairable.

(x) “Unanticipated event or condition” as used in section eighteen of this article means an event or condition in a remining operation that was not contemplated by the applicable surface coal mining and reclamation permit.

(y) “Lands eligible for remining” means those lands that would be eligible for expenditures under section four, article two of this chapter. Surface mining operations on lands eligible for remining do not affect the eligibility of the lands for reclamation and restoration under article two of this chapter.
event the bond or deposit for lands eligible for remining is forfeited, funds available under article two of this chapter may be used to provide for adequate reclamation or abatement. However, if conditions constitute an emergency as provided in section 410 of the federal Surface Mining Control and Reclamation Act of 1977, as amended, then those federal provisions apply.

(z) "Replacement of water supply" means, with respect to water supplies, contaminated, diminished or interrupted provision of water supply on both a temporary and permanent basis of equivalent quality and quantity. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance cost in excess of customary and reasonable delivery cost for the replaced water supplies.

Upon agreement by the permittee and the water supply owner, the obligation to pay the costs may be satisfied by a one-time payment in an amount which covers the present annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner.


(a) Any permit issued by the director pursuant to this article to conduct surface mining operations shall require that the surface mining operations meet all applicable performance standards of this article and other requirements set forth in legislative rules proposed by the director.

(b) The following general performance standards are applicable to all surface mines and require the operation, at a minimum to:

(1) Maximize the utilization and conservation of the solid fuel resource being recovered to minimize reaffecting the land in the future through surface mining;
(2) Restore the land affected to a condition capable of supporting the uses which it was capable of supporting prior to any mining, or higher or better uses of which there is reasonable likelihood so long as the use or uses do not present any actual or probable hazard to public health or safety or pose any actual or probable threat of water diminution or pollution and the permit applicants' declared proposed land use following reclamation is not considered to be impractical or unreasonable, inconsistent with applicable land use policies and plans, involves unreasonable delay in implementation or is violative of federal, state or local law;

(3) Except as provided in subsection (c) of this section, with respect to all surface mines, backfill, compact where advisable to ensure stability or to prevent leaching of toxic materials, and grade in order to restore the approximate original contour: Provided, That in surface mining which is carried out at the same location over a substantial period of time where the operation transects the coal deposit, and the thickness of the coal deposits relative to the volume of the overburden is large and where the operator demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expansion, to restore the approximate original contour, the operator, at a minimum, shall backfill, grade and compact, where advisable, using all available overburden and other spoil and waste materials to attain the lowest practicable grade, but not more than the angle of repose, to provide adequate drainage and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region: Provided, however, That in surface mining where the volume of overburden is large relative to the thickness of the coal deposit and where the operator demonstrates that due to volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the
mining operation is more than sufficient to restore the approximate original contour, the operator shall, after restoring the approximate contour, backfill, grade and compact, where advisable, the excess overburden and other spoil and waste materials to attain the lowest grade, but not more than the angle of repose, and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region and, the overburden or spoil shall be shaped and graded in a way as to prevent slides, erosion and water pollution and revegetated in accordance with the requirements of this article: Provided further, That the director shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code, governing variances to the requirements for return to approximate original contour or highwall elimination and where adequate material is not available from surface mining operations permitted after the effective date of this article for: (A) Underground mining operations existing prior to the third day of August, one thousand nine hundred seventy-seven; or (B) for areas upon which surface mining prior to the first day of July, one thousand nine hundred seventy-seven, created highwalls;

(4) Stabilize and protect all surface areas, including spoil piles, affected by the surface mining operation to effectively control erosion and attendant air and water pollution;

(5) Remove the topsoil from the land in a separate layer, replace it on the backfill area, or if not utilized immediately, segregate it in a separate pile from other spoil and, when the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain a successful vegetative cover by quick growing plants or by other similar means in order to protect topsoil from wind and water erosion and keep it free of any contamination by other acid or toxic material: Provided, That if topsoil is of insufficient quantity or of poor quality for sustaining vegetation, or if other strata can be shown to be more suitable for vegetation requirements, then
the operator shall remove, segregate and preserve in a like manner any other strata which is best able to support vegetation;

(6) Restore the topsoil or the best available subsoil which is best able to support vegetation;

(7) Ensure that all prime farmlands are mined and reclaimed in accordance with the specifications for soil removal, storage, replacement and reconstruction established by the United States secretary of agriculture and the soil conservation service pertaining thereto. The operator, at a minimum, shall:

(A) Segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity, and if not utilized immediately, stockpile this material separately from other spoil, and provide needed protection from wind and water erosion or contamination by other acid or toxic material; (B) segregate the B horizon of the natural soil, or underlying C horizons or other strata, or a combination of the horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon, in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil, and if not utilized immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material; (C) replace and regrade the root zone material described in paragraph (B) of this subdivision, with proper compaction and uniform depth over the regraded spoil material; and (D) redistribute and grade in a uniform manner the surface soil horizon described in paragraph (A) of this subdivision;

(8) Create, if authorized in the approved surface mining and reclamation plan and permit, permanent impoundments of water
on mining sites as part of reclamation activities in accordance with rules promulgated by the director;

(9) Where augering is the method of recovery, seal all auger holes with an impervious and noncombustible material in order to prevent drainage except where the director determines that the resulting impoundment of water in the auger holes may create a hazard to the environment or the public welfare and safety: Provided, That the director may prohibit augering if necessary to maximize the utilization, recoverability or conservation of the mineral resources or to protect against adverse water quality impacts;

(10) Minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated off-site areas and to the quality and quantity of water in surface and groundwater systems both during and after surface mining operations and during reclamation by: (A) Avoiding acid or other toxic mine drainage by such measures as, but not limited to: (i) Preventing or removing water from contact with toxic producing deposits; (ii) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses; and (iii) casing, sealing or otherwise managing boreholes, shafts and wells and keep acid or other toxic drainage from entering ground and surface waters; (B) conducting surface mining operations so as to prevent to the extent possible, using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but in no event may contributions be in excess of requirements set by applicable state or federal law; (C) constructing an approved drainage system pursuant to paragraph (B) of this subdivision, prior to commencement of surface mining operations, the system to be certified by a person approved by the director to be constructed as designed and as approved in the reclamation plan; (D) avoiding channel deepening or enlargement in operations requiring the discharge of water from mines; (E) unless otherwise authorized by the director, cleaning out
and removing temporary or large settling ponds or other siltation structures after disturbed areas are revegetated and stabilized, and depositing the silt and debris at a site and in a manner approved by the director; (F) restoring recharge capacity of the mined area to approximate premining conditions; and (G) any other actions prescribed by the director;

(11) With respect to surface disposal of mine wastes, tailings, coal processing wastes and other wastes in areas other than the mine working excavations, stabilize all waste piles in designated areas through construction in compacted layers, including the use of noncombustible and impervious materials if necessary, and assure the final contour of the waste pile will be compatible with natural surroundings and that the site will be stabilized and revegetated according to the provisions of this article;

(12) Design, locate, construct, operate, maintain, enlarge, modify and remove or abandon, in accordance with standards and criteria developed pursuant to subsection (f) of this section, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes or other liquid and solid wastes, and used either temporarily or permanently as dams or embankments;

(13) Refrain from surface mining within five hundred feet of any active and abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners: Provided, That the director shall permit an operator to mine near, through or partially through an abandoned underground mine or closer to an active underground mine if: (A) The nature, timing and sequencing of the approximate coincidence of specific surface mine activities with specific underground mine activities are coordinated jointly by the operators involved and approved by the director; and (B) the operations will result in improved resource recovery, abatement of water pollution or elimination of hazards to the health and safety of the public:
Provided, however, That any breakthrough which does occur shall be sealed;

(14) Ensure that all debris, acid-forming materials, toxic materials or materials constituting a fire hazard are treated or buried and compacted, or otherwise disposed of in a manner designed to prevent contamination of ground or surface waters, and that contingency plans are developed to prevent sustained combustion: Provided, That the operator shall remove or bury all metal, lumber, equipment and other debris resulting from the operation before grading release;

(15) Ensure that explosives are used only in accordance with existing state and federal law and the rules promulgated by the director, which shall include provisions to:

   (A) Maintain for a period of at least three years and make available for public inspection, upon written request, a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole and the order and length of delay in the blasts; and

   (B) Require that all blasting operations be conducted by persons certified by the office of explosives and blasting.

(16) Ensure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface mining operations. Time limits shall be established by the director requiring backfilling, grading and planting to be kept current: Provided, That where surface mining operations and underground mining operations are proposed on the same area, which operations must be conducted under separate permits, the director may grant a variance from the requirement that reclamation efforts proceed as contemporaneously as practicable to permit underground mining operations prior to reclamation:

   (A) If the director finds in writing that:
(i) The applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining operations;

(ii) The proposed underground mining operations are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple disturbance of the surface;

(iii) The applicant has satisfactorily demonstrated that the plan for the underground mining operations conforms to requirements for underground mining in the jurisdiction and that permits necessary for the underground mining operations have been issued by the appropriate authority;

(iv) The areas proposed for the variance have been shown by the applicant to be necessary for the implementing of the proposed underground mining operations;

(v) No substantial adverse environmental damage, either on-site or off-site, will result from the delay in completion of reclamation as required by this article; and

(vi) Provisions for the off-site storage of spoil will comply with subdivision (22), subsection (b) of this section;

(B) If the director has promulgated specific rules to govern the granting of the variances in accordance with the provisions of this subparagraph and has imposed any additional requirements as the director considers necessary;

(C) If variances granted under the provisions of this paragraph are reviewed by the director not more than three years from the date of issuance of the permit: Provided, That the underground mining permit shall terminate if the underground operations have not commenced within three years of the date the permit was issued, unless extended as set forth in subdivision (3), section eight of this article; and
(D) If liability under the bond filed by the applicant with the director pursuant to subsection (b), section eleven of this article is for the duration of the underground mining operations and until the requirements of subsection (g), section eleven and section twenty-three of this article have been fully complied with;

(17) Ensure that the construction, maintenance and post-mining conditions of access and haul roads into and across the site of operations will control or prevent erosion and siltation, pollution of water, damage to fish or wildlife or their habitat, or public or private property: Provided, That access roads constructed for and used to provide infrequent service to surface facilities, such as ventilators or monitoring devices, are exempt from specific construction criteria provided adequate stabilization to control erosion is achieved through alternative measures;

(18) Refrain from the construction of roads or other access ways up a stream bed or drainage channel or in proximity to the channel so as to significantly alter the normal flow of water;

(19) Establish on the regraded areas, and all other lands affected, a diverse, effective and permanent vegetative cover of the same seasonal variety native to the area of land to be affected or of a fruit, grape or berry producing variety suitable for human consumption and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area, except that introduced species may be used in the revegetation process where desirable or when necessary to achieve the approved post-mining land use plan;

(20) Assume the responsibility for successful revegetation, as required by subdivision (19) of this subsection, for a period of not less than five growing seasons, as defined by the director, after the last year of augmented seeding, fertilizing, irrigation or other work in order to assure compliance with subdivision (19) of this subsection: Provided, That when the director issues
a written finding approving a long-term agricultural post-
mining land use as a part of the mining and reclamation plan, 
the director may grant exception to the provisions of subdivi-
sion (19) of this subsection: Provided, however, That when the 
director approves an agricultural post-mining land use, the 
applicable five growing seasons of responsibility for 
revegetation begins on the date of initial planting for the 
agal cultural post-mining land use;

On lands eligible for remining assume the responsibility for 
successful revegetation, as required by subdivision (19) of this 
subsection, for a period of not less than two growing seasons, 
as defined by the director after the last year of augmented 
seeding, fertilizing, irrigation or other work in order to assure 
compliance with subdivision (19) of this subsection;

(21) Protect off-site areas from slides or damage occurring 
during surface mining operations and not deposit spoil material 
or locate any part of the operations or waste accumulations 
outside the permit area: Provided, That spoil material may be 
placed outside the permit area, if approved by the director after 
a finding that environmental benefits will result from the 
placing of spoil material outside the permit area;

(22) Place all excess spoil material resulting from sur-
face-mining activities in a manner that: (A) Spoil is transported 
and placed in a controlled manner in position for concurrent 
compaction and in a way as to assure mass stability and to 
prevent mass movement; (B) the areas of disposal are within the 
 bonded permit areas and all organic matter is removed immedi-
ately prior to spoil placements; (C) appropriate surface and 
internal drainage system or diversion ditches are used to 
prevent spoil erosion and movement; (D) the disposal area does 
not contain springs, natural water courses or wet weather seeps, 
unless lateral drains are constructed from the wet areas to the 
main under drains in a manner that filtration of the water into 
the spoil pile will be prevented; (E) if placed on a slope, the
spoil is placed upon the most moderate slope among those upon which, in the judgment of the director, the spoil could be placed in compliance with all the requirements of this article, and is placed, where possible, upon, or above, a natural terrace, bench or berm, if placement provides additional stability and prevents mass movement; (F) where the toe of the spoil rests on a downslope, a rock toe buttress, of sufficient size to prevent mass movement, is constructed; (G) the final configuration is compatible with the natural drainage pattern and surroundings and suitable for intended uses; (H) the design of the spoil disposal area is certified by a qualified registered professional engineer in conformance with professional standards; and (I) all other provisions of this article are met: Provided, That where the excess spoil material consists of at least eighty percent, by volume, sandstone, limestone or other rocks that do not slake in water and will not degrade to soil material, the director may approve alternate methods for disposal of excess spoil material, including fill placement by dumping in a single lift, on a site specific basis: Provided, however, That the services of a qualified registered professional engineer experienced in the design and construction of earth and rockfill embankment are utilized: Provided further, That the approval may not be unreasonably withheld if the site is suitable;

(23) Meet any other criteria necessary to achieve reclamation in accordance with the purposes of this article, taking into consideration the physical, climatological and other characteristics of the site;

(24) To the extent possible, using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife and related environmental values, and achieve enhancement of these resources where practicable; and

(25) Retain a natural barrier to inhibit slides and erosion on permit areas where outcrop barriers are required: Provided,
That constructed barriers may be allowed where: (A) Natural barriers do not provide adequate stability; (B) natural barriers would result in potential future water quality deterioration; and (C) natural barriers would conflict with the goal of maximum utilization of the mineral resource: Provided, however, That at a minimum, the constructed barrier shall be of sufficient width and height to provide adequate stability and the stability factor shall equal or exceed that of the natural outcrop barrier: Provided further, That where water quality is paramount, the constructed barrier shall be composed of impervious material with controlled discharge points.

(c) (1) The director may prescribe procedures pursuant to which he or she may permit surface mining operations for the purposes set forth in subdivision (3) of this subsection.

(2) Where an applicant meets the requirements of subdivisions (3) and (4) of this subsection, a permit without regard to the requirement to restore to approximate original contour set forth in subsection (b) or (d) of this section may be granted for the surface mining of coal where the mining operation will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge or hill, except as provided in subparagraph (A), subdivision (4) of this subsection, by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining, and capable of supporting post-mining uses in accordance with the requirements of this subsection.

(3) In cases where an industrial, commercial, agricultural, commercial forestry, residential, or public facility including recreational uses is proposed for the post-mining use of the affected land, the director may grant a permit for a surface mining operation of the nature described in subdivision (2) of this subsection where: (A) The proposed post-mining land use is determined to constitute an equal or better use of the affected land, as compared with premining use; (B) the applicant
presents specific plans for the proposed post-mining land use and appropriate assurances that the use will be: (i) Compatible with adjacent land uses; (ii) practicable with respect to achieving the proposed use; (iii) obtainable according to data regarding expected need and market; (iv) supported by commitments from public agencies where appropriate; (v) practicable with respect to private financial capability for completion of the proposed use; (vi) planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the post-mining land use; and (vii) designed by a person approved by the director in conformance with standards established to assure the stability, drainage and configuration necessary for the intended use of the site; (C) the proposed use would be compatible with adjacent land uses, and existing state and local land use plans and programs; (D) the director provides the county commission of the county in which the land is located and any state or federal agency which the director, in his or her discretion, determines to have an interest in the proposed use, an opportunity of not more than sixty days to review and comment on the proposed use; and (E) all other requirements of this article will be met.

(4) In granting any permit pursuant to this subsection, the director shall require that: (A) A natural barrier be retained to inhibit slides and erosion on permit areas where outcrop barriers are required: Provided, That constructed barriers may be allowed where: (i) Natural barriers do not provide adequate stability; (ii) natural barriers would result in potential future water quality deterioration; and (iii) natural barriers would conflict with the goal of maximum utilization of the mineral resource: Provided, however, That, at a minimum, the constructed barrier shall be sufficient in width and height to provide adequate stability and the stability factor shall equal or exceed that of the natural outcrop barrier: Provided further, That where water quality is paramount, the constructed barrier shall be composed of impervious material with controlled
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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 post-
423 mining land use: And provided further, That all excess spoil
424 material-not retained on the mountaintop shall be placed in
425 accordance with the provisions of subdivision (22), subsection
426 (b) of this section; and (F) ensure stability of the spoil retained
427 on the mountaintop and meet the other requirements of this
428 article.

429 (5) All permits granted under the provisions of this subsec-
430 tion shall be reviewed not more than three years from the date
431 of issuance of the permit; unless the applicant affirmatively
432 demonstrates that the proposed development is proceeding in
433 accordance with the terms of the approved schedule and
434 reclamation plan.

435 (d) In addition to those general performance standards
436 required by this section, when surface mining occurs on slopes
437 of twenty degrees or greater, or on lesser slopes as may be
438 defined by rule after consideration of soil and climate, no
439 debris, abandoned or disabled equipment, spoil material or
440 waste mineral matter will be placed on the natural downslope
441 below the initial bench or mining cut: Provided, That soil or
442 spoil material from the initial cut of earth in a new surface
443 mining operation may be placed on a limited specified area of
444 the downslope below the initial cut if the permittee can estab-
445 lish to the satisfaction of the director that the soil or spoil will
446 not slide and that the other requirements of this section can still
447 be met.

448 (e) The director may propose rules for legislative approval
449 in accordance with article three, chapter twenty-nine-a of this
450 code, that permit variances from the approximate original
451 contour requirements of this section: Provided, That the
watershed control of the area is improved: Provided, however,
That complete backfilling with spoil material is required to
completely cover the highwall, which material will maintain
stability following mining and reclamation.

(f) The director shall propose rules for legislative approval
in accordance with article three, chapter twenty-nine-a of this
code, for the design, location, construction, maintenance,
operation, enlargement, modification, removal and abandon-
ment of new and existing coal mine waste piles. In addition to
engineering and other technical specifications, the standards
and criteria developed pursuant to this subsection shall include
provisions for review and approval of plans and specifications
prior to construction, enlargement, modification, removal or
abandonment; performance of periodic inspections during
construction; issuance of certificates of approval upon comple-
tion of construction; performance of periodic safety inspections;
and issuance of notices and orders for required remedial or
maintenance work or affirmative action: Provided, That
whenever the director finds that any coal processing waste pile
constitutes an imminent danger to human life, he or she may, in
addition to all other remedies and without the necessity of
obtaining the permission of any person prior or present who
operated or operates a pile or the landowners involved, enter
upon the premises where any coal processing waste pile exists
and may take or order to be taken any remedial action that may
be necessary or expedient to secure the coal processing waste
pile and to abate the conditions which cause the danger to
human life: Provided, however, That the cost reasonably
incurred in any remedial action taken by the director under this
subsection may be paid for initially by funds appropriated to the
division for these purposes, and the sums expended shall be
recovered from any responsible operator or landowner, individ-
ually or jointly, by suit initiated by the attorney general at the
request of the director. For purposes of this subsection "oper-
ates" or "operated" means to enter upon a coal processing waste
pile, or part of a coal processing waste pile, for the purpose of
disposing, depositing, dumping coal processing wastes on the
pile or removing coal processing waste from the pile, or to
employ a coal processing waste pile for retarding the flow of or
for the impoundment of water.

§22-3-23. Release of bond or deposits; application; notice; duties
of director; public hearings; final maps on grade
release.

(a) The permittee may file a request with the director for the
release of a bond or deposit. The permittee shall publish an
advertisement regarding the request for release in the same
manner as is required of advertisements for permit applications.
A copy of the advertisement shall be submitted to the director
as part of any bond release application and shall contain a
notification of the precise location of the land affected, the
number of acres, the permit and the date approved, the amount
of the bond filed and the portion sought to be released, the type
and appropriate dates of reclamation work performed and a
description of the results achieved as they relate to the
permittee's approved reclamation plan. In addition, as part of
any bond release application, the permittee shall submit copies
of letters which the permittee has sent to adjoining property
owners, local government bodies, planning agencies, sewage
and water treatment authorities or water companies in the
locality in which the surface mining operation is located,
notifying them of the permittee's intention to seek release from
the bond. Any request for grade release shall also be accompa-
nied by final maps.

(b) Upon receipt of the application for bond release, the
director, within thirty days, taking into consideration existing
weather conditions, shall conduct an inspection and evaluation
of the reclamation work involved. The evaluation shall con-
sider, among other things, the degree of difficulty to complete
any remaining reclamation, whether pollution of surface and
subsurface water is occurring, the probability of continuance or future occurrence of the pollution and the estimated cost of abating the pollution. The director shall notify the permittee in writing of his or her decision to release or not to release all or part of the bond or deposit within sixty days from the date of the initial publication of the advertisement if no public hearing is requested. If a public hearing is held, the director's decision shall be issued within thirty days thereafter.

(c) If the director is satisfied that reclamation covered by the bond or deposit or portion thereof has been accomplished as required by this article, he or she may release the bond or deposit, in whole or in part, according to the following schedule:

(1) For all operations except those with an approved variance from approximate original contour:

(A) When the operator completes the backfilling, regrading and drainage control of a bonded area in accordance with the operator's approved reclamation plan, the release of sixty percent of the bond or collateral for the applicable bonded area: Provided, That a minimum bond of ten thousand dollars shall be retained after grade release;

(B) Two years after the last augmented seeding, fertilizing, irrigation or other work to ensure compliance with subdivision (19), subsection (b), section thirteen of this article, the release of an additional twenty-five percent of the bond or collateral for the applicable bonded area: Provided, That a minimum bond of ten thousand dollars shall be retained after the release provided for in this subdivision; and

(C) When the operator has completed successfully all surface mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified in subdivision (20), subsection (b), section thirteen of this article: Provided, That the revegetation has been...
established on the regraded mined lands in accordance with the approved reclamation plan: Provided, however, That the release may be made where the quality of the untreated post-mining water discharged is better than or equal to the premining water quality discharged from the mining site.

(2) For operations with an approved variance from approximate original contour:

(A) When the operator completes the backfilling, regrading and drainage control of a bonded area in accordance with the operator's approved reclamation plan, the release of fifty percent of the bond or collateral for the applicable bonded area: Provided, That a minimum bond of ten thousand dollars shall be retained after grade release;

(B) Two years after the last augmented seeding, fertilizing, irrigation or other work to ensure compliance with subdivision (19), subsection (b), section thirteen of this article, the release of an additional ten percent of the bond or collateral for the applicable bonded area: Provided, That a minimum bond of ten thousand dollars shall be retained after the release provided for in this subdivision; and

(C) When the operator has completed successfully all surface mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified in subdivision (20), subsection (b), section thirteen of this article: Provided, That the revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan and if applicable the necessary post-mining infrastructure is established and any necessary financing is completed: Provided, however, That the release may be made where the quality of the untreated post-mining water discharged is better than or equal to the premining water quality discharged from the mining site.
No part of the bond or deposit may be released under this subsection so long as the lands to which the release would be applicable are contributing additional suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by section thirteen of this article, or until soil productivity for prime farmlands has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to section nine of this article. Where a sediment dam is to be retained as a permanent impoundment pursuant to section thirteen of this article, or where a road or minor deviation is to be retained for sound future maintenance of the operation, the portion of the bond may be released under this subsection so long as provisions for sound future maintenance by the operator or the landowner have been made with the director.

Notwithstanding the bond release scheduling provisions of subdivisions (1), (2) and (3) of this subsection, if the operator completes the backfilling and reclamation in accordance with an approved post-mining land use plan that has been approved by the division of environmental protection and accepted by a local or regional economic development or planning agency for the county or region in which the operation is located, provisions for sound future maintenance are assured by the local or regional economic development or planning agency, and the quality of any untreated post-mining water discharge complies with applicable water quality criteria for bond release, the director may release the entire amount of the bond or deposit. The director shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to govern a bond release pursuant to the terms of this paragraph.

(d) If the director disapproves the application for release of the bond or portion thereof, the director shall notify the permittee, in writing, stating the reasons for disapproval and
recommending corrective actions necessary to secure the release and notifying the operator of the right to a hearing.

(e) When any application for total or partial bond release is filed with the director, he or she shall notify the municipality in which a surface-mining operation is located by registered or certified mail at least thirty days prior to the release of all or a portion of the bond.

(f) Any person with a valid legal interest which is or may be adversely affected by release of the bond or the responsible officer or head of any federal, state or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social or economic impact involved in the operation, or is authorized to develop and enforce environmental standards with respect to the operations, has the right to file written objections to the proposed bond release and request a hearing with the director within thirty days after the last publication of the permittee’s advertisement. If written objections are filed and a hearing requested, the director shall inform all of the interested parties of the time and place of the hearing and shall hold a public hearing in the locality of the surface-mining operation proposed for bond release within three weeks after the close of the public comment period. The date, time and location of the public hearing shall also be advertised by the director in a newspaper of general circulation in the same locality.

(g) Without prejudice to the rights of the objectors, the applicant, or the responsibilities of the director pursuant to this section, the director may hold an informal conference to resolve any written objections and satisfy the hearing requirements of this section thereby.

(h) For the purpose of the hearing, the director has the authority and is hereby empowered to administer oaths, subpoena witnesses and written or printed materials, compel the
attendance of witnesses, or production of materials, and take
evidence, including, but not limited to, inspections of the land
affected and other surface-mining operations carried on by the
applicant in the general vicinity. A verbatim record of each
public hearing required by this section shall be made and a
transcript made available on the motion of any party or by order
of the director at the cost of the person requesting the transcript.

CHAPTER 173

(Com. Sub. for H. B. 4055 — By Delegates Linch,
Johnson, Dalton, Webb, Pino, Faircloth and Smirl)

[Passed March 10, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article four, chapter twenty-two of the
code of West Virginia, one thousand nine hundred thirty-one, as
amended; and to amend and reenact sections one and two, article
four, chapter twenty-two-b of said code, all relating generally to
quarry mining; creating the quarry reclamation act; establishing
legislative findings; defining terms; establishing the powers and
duties of the director of the division of environmental protection;
providing that the quarry reclamation act does not apply to coal
mining; authorizing proposal of legislative rules; establishing
conditions and requirements for quarry permits; prohibiting
quarrying without a permit; establishing five-year term for
permits; requiring quarry permit for certain underground quarry
operations and requiring performance bond; providing for
application review, including public hearing, notice and comment
period; providing for approval of quarry permits; authorizing
denial of permit application, modification or transfer under
certain conditions; authorizing approval of portion of permit area;
providing certain requirements for underground mines; providing
for reinstatement under certain conditions; prohibiting quarrying
in certain areas; authorizing permit denial in certain situations; allowing permit denial at certain locations; establishing limitations and conditions for permit denials; providing for writ of mandamus to enforce performance of mandatory duty; authorizing permit renewals and revisions; establishing criteria for modification of permits; requiring application for permit modifications; providing for minor permit modifications; requiring public notice but not public hearing for minor modifications; establishing requirements for major permit modifications; requiring applicants for major permit modifications meet same requirements as new permit applicants; authorizing transfer of permits; establishing transfer fee; prohibiting transfer of permits under certain conditions; establishing requirements for pre-blast survey; establishing restrictions on blasting; establishing a blasting formula; requiring pre-blast plan to be filed; establishing site specific blasting requirements; providing penalties; authorizing promulgation of legislative rules for blasting notice; establishing performance standards for quarry operations; establishing applicability of the groundwater protection act to portions of quarry operations; requiring a quarrying and reclamation plan; establishing requirements of quarrying and reclamation plans; establishing land reclamation requirements; providing time period for reclamation; providing that all quarry operations comply with approved quarrying and reclamation plan and this article; requiring blasting insurance; requiring performance bonds for new quarry operations; allowing incremental and other forms of bonding; providing for release of bond; establishing a bond pooling fund; establishing requirements for participation in bond pooling fund; authorizing expenditures from bond pooling fund for reclamation upon forfeiture of bond; creating quarry reclamation fund consisting of forfeited bonds, interest from bond pooling fund, and civil administrative penalties; providing treble damages for certain offenses; providing funds from quarry reclamation fund to be used for reclamation of abandoned quarries; providing for notice of noncompliance; authorizing suspension or revocation of permit for noncompliance; authorizing revocation of bond;
authorizing director to inspect quarry operations; authorizing enforcement actions, civil and criminal penalties; authorizing appeals to surface mine board; assessing fees relating to permits and disposition of those fees; establishing quarry inspection and enforcement fund, requiring permit fees be deposited into fund; providing exceptions for certain existing quarries; declaring certain persons ineligible for permit; exempting certain activities of governmental entities and manufacturers from this article; authorizing quarry mining appeals to surface mining board; adding alternative members to board to hear quarry cases; establishing qualifications and eligibility for alternative surface mine board members; and providing that funds from quarry cases be deposited in the quarry reclamation fund.

*Be it enacted by the Legislature of West Virginia:*

That article four, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections one and two, article four, chapter twenty-two-b of said code be amended and reenacted, all to read as follows:

**Chapter**

22. Environmental Resources.

22B. Environmental Boards.

**CHAPTER 22. ENVIRONMENTAL RESOURCES.**

**ARTICLE 4. QUARRY RECLAMATION ACT.**

§22-4-1. Short title.
§22-4-2. Legislative findings.
§22-4-3. Definitions.
§22-4-4. Director of the division of environmental protection; powers and duties.
§22-4-5. Quarry permit requirements.
§22-4-6. Application review, public notice and comment, and permit approval.
§22-4-7. Denial of quarry permit.
§22-4-8. Limitations; mandamus.
§22-4-9. Permit renewals and revisions.
§22-4-10. Modification of permits.
§22-4-11. Transfer of permits.
§22-4-12. Pre-blast survey requirements.
§22-4-13. Blasting restrictions; blasting formula; filing preplan; site specific blasting requirements; penalties; notice.
§22-4-14. Performance standards.
§22-4-16. Water rights and replacement; waiver of replacement.
§22-4-17. Quarrying and reclamation plan.
§22-4-18. Land reclamation requirements.
§22-4-19. Time period for reclamation.
§22-4-20. Fiscal responsibility.
§22-4-22. Bond pooling fund.
§22-4-23. Quarry reclamation fund.
§22-4-24. Orders, inspections and enforcement; permit revocation, damages, civil and criminal penalties.
§22-4-25. Appeals to board.
§22-4-26. Required fees, quarry inspection and enforcement fund.
§22-4-27. Exception for certain existing quarries.
§22-4-28. Persons ineligible for a permit.
§22-4-29. Exemptions.

§22-4-1. Short title.

1 This article shall be known and may be cited as the “Quarry Reclamation Act.”

§22-4-2. Legislative findings.

1 The Legislature finds that:

2 The extraction of noncoal minerals by quarrying is a basic, essential and vital industry making an important contribution to the economic well-being of West Virginia. From the small family-owned chert pit to the multinational limestone quarry, quarry aggregate production plays a vital role in West Virginia’s economy and the quality of life for its residents; it is in the public interest to insure the availability and orderly development of mineral resources; aggregate minerals are necessary components in many construction activities, without fine and coarse aggregates, it would be impossible to build or maintain
the state roadways and airports, with every type of significant
construction activity being dependent on the availability and
reasonable costs of aggregate minerals and aggregate mineral
products; it is not practical to extract minerals required by our
society without disturbing the surface of the earth and produc-
ing waste materials, and the very character of quarry operations
precludes complete restoration of the land to its original
condition.

This article also provides requirements intended to protect
wildlife and prevent the pollution to the environment surround-
ing quarries, including rivers, streams, groundwater, aquifers
and lakes, to prevent and eliminate hazards to health and safety,
to protect all property owners' property rights, and to provide
for reclamation of quarried areas so as to assure the continued
use and enjoyment of these lands after quarrying is completed;

Further, certain areas in the state are inappropriate for
quarry mining while in most locations of West Virginia,
quarrying can be conducted in a fashion to prevent these
undesirable conditions, while allowing for mining of valuable
minerals.

Therefore, the Legislature finds that the quarrying of
minerals and reclamation of quarry lands as provided by this
article will allow the use of valuable minerals and will provide
for the protection of the state's environment and for the
subsequent beneficial use of the quarry and reclaimed land.

§22-4-3. Definitions.

Unless the context in which it is used clearly requires a
different meaning, as used in this article:

(1) "Abandoned quarry" or "abandoned quarry lands"
(A) A quarry which was operated and abandoned without proper reclamation prior to the effective date of this article; or

(B) A permitted quarry where no mineral has been produced or overburden removed for a period of at least six months and the permittee has vacated the site covered by the permit without having complied with all of the requirements of the permit.

Abandoned quarry lands does not mean a quarry which has been granted inactive status by the director and does not mean a quarry which has ceased operations and is in the process of stabilization and reclamation.

(2) "Backfill" means overburden, dirt, rock or other materials that are used as fill material to reduce steepness of slopes or to fill holes, depressions or excavations.

(3) "Berm" means a type of fill or pile used for a specific purpose other than excess spoil disposal; such purposes may include, but not necessarily be limited to drainage control, screening for noise control, screening for aesthetic value, or safety barriers; provided, however, that a berm of ten vertical feet or more at any point shall be designed and the construction certified by an approved person and provided further that any berm consisting of greater than twenty percent fines or nondurable rock must be protected from wind and water erosion.

(4) "Borrow pit" means an area from which soil or other materials are removed to be used, without further processing, as fill for activities such as landscaping, building construction or highway maintenance and construction.

(5) "Critical gradient" means the maximum stable inclination of an unsupported slope as measured from a horizontal plane.
(6) "Director" means the director of the division of environmental protection and his or her authorized agents.

(7) "Disturbed area" means the land area from which the mineral is removed by quarrying and all other land area in which the natural land surface has been disturbed as a result of or incidental to quarrying activities of the operator, including private ways and private roads appurtenant to the area, land excavations, workings, refuse piles, product stockpiles, areas grubbed of vegetation, overburden, piles and tailings. The term does not include manufacturing sites or reclaimed quarry areas.

(8) "Division" means the division of environmental protection.

(9) "Fill" means a side of hill fill or valley fill.

(10) "Inactive operation" means either:

(A) A permitted site where active work has ceased temporarily due to weather conditions, market conditions or other reasonable cause; or

(B) A permitted site where active quarrying has not yet begun.

(11) "Manufacturing" means the process of converting raw materials to salable products but does not include crushing or screening of minerals undertaken in close proximity to active quarrying operations.

(12) "Manufacturing site" means an area of land on which manufacturing occurs and associated areas.

(13) "Minerals" means natural deposits of commercial value found on or in the earth, whether consolidated or loose, including clay, flagstone, gravel, sand, limestone, sandstone, shale, chert, flint, dolomite, manganese, slate, iron ore and any
other metal or metallurgical ore. The term does not include coal or topsoil.

(14) "Mulch" means any natural or plant residue, organic or inorganic material, applied to the surface of the earth to retain moisture and curtail or limit soil erosion.

(15) "Operator" means a person who engages in any activities regulated by this article and any rules promulgated hereunder, who as a result is required to hold a permit pursuant to the provisions herein.

(16) "Permit area" means the area of land indicated on the approved map submitted by the permittee and designated in the permit including the location of end strip markers, permit markers and monuments.

(17) "Permittee" means any person who holds a valid permit issued by the division to conduct quarrying activities pursuant to this article".

(18) "Person" means any individual, partnership, firm, society, association, trust, corporation, other business entity or any agency, unit or instrumentality of federal, state or local government.

(19) "Protected structure" means any of the following structures that are situated outside the permit area: a occupied dwelling, a temporarily unoccupied dwelling which has been occupied within the past ninety days, a public building, a structure for commercial purposes, a school, a church, a community or institutional building, a public park, spring box or, water well.

(20) "Quarrying" means any breaking of the ground surface in order to facilitate the extraction of minerals. Quarrying also includes any activity constituting all or part of a process for mineral extraction or removal from their original location as
... well as adjacent areas ancillary to the operation, including preparation and processing activities, storage areas and haulage ways, roads and trails. The term "quarrying" does not apply to manufacturing operations, including those operations adjacent to the permitted area where manufacturing is conducted.

(21) "Reclamation" means returning disturbed areas to a stable condition which does not create health or safety hazards or adverse environmental impact, and when appropriate or required by permit, returning disturbed quarry areas to a designated postmining land use.

(22) "Side of hill fill" means overburden, dirt or rock that is placed on a natural slope of more than twenty degrees.

(23) "Spoil pile" means overburden and waste material displaced by excavating equipment or other methods and placed on natural ground with an original slope of zero degrees to twenty degrees.

(24) "Surface of regraded bench" means the top portion or part of any regraded area.

(25) "Unreclaimed" means land which has not been stabilized, or if a permit has been issued pursuant to this enactment, land that has not been rehabilitated to a useful purpose in accordance with the quarrying and reclamation plan approved by the division.

(26) "Valley fill" means a fill structure consisting of material placed in a valley where the natural side slopes measured at the steepest point are greater than twenty degrees or the average slopes measured at the steepest point are greater than twenty degrees or the average slopes or the profile of the hollow are greater than twenty degrees.

§22-4-4. Director of the division of environmental protection; powers and duties.
The director of the division of environmental protection is vested with jurisdiction over all aspects of quarrying and with jurisdiction and control over land, water and soil aspects pertaining to quarry operations, and the restoration and reclamation of quarries and areas affected thereby. This article does not address coal mining activities unless covered by subdivision (2), subsection (u), section three, article three of this chapter.

In addition to any other powers or duties heretofore or hereinafter granted, the director has the following powers and duties:

(a) To control and exercise regulatory authority over all quarry operations in this state and enforce the provisions of this article;

(b) To employ all necessary personnel to carry out the purposes and requirements of this article;

(c) To propose any necessary legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code to implement the provisions of this article; and

(d) To make investigations and inspections necessary to ensure compliance with the provisions of this article.

(e) Nothing in this article may be construed as vesting in the director the jurisdiction to adjudicate property-rights disputes.

§22-4-5. Quarry permit requirements.

(a) It is unlawful for any person to engage in quarrying without having first obtained from the division a permit as required by this article. The application shall fully state the information required by the director. Each new quarry permit shall be issued for a term of five years and is renewable for subsequent terms of five years. The director may grant an
administrative extension of an existing permit for a period not
to exceed one year. The application may be in writing and on a
form prepared and furnished by the division, or the application
may be submitted electronically. Applicants shall verify
electronic submissions by signed affidavit.

(b) The application shall include the following information:

(1) The names and addresses of the applicant and every
officer, partner, director, owner of the applicant;

(2) The names and mailing addresses of any person owning
of record or beneficially ten percent or more of any class of
stock of the applicant;

(3) The name of any person listed in subdivision (1) or (2)
of this subsection who has ever had a quarry permit revoked or
had a quarry bond forfeited;

(4) The names and addresses of the owners of the surface
of the land to be quarried;

(5) The names and addresses of the owners of the mineral
to be quarried;

(6) The source of the applicant’s legal right to conduct
quarrying on the land to be covered by the permit;

(7) A pre-quarry water assessment to establish the base
level quality and quantity as provided in section fourteen of this
article;

(8) The number of acres to be included in the permit area;

(9) A list of other quarrying permits previously or currently
held by the applicant, by location and permit number, and any
other type of mining permits being applied for or currently held
by the applicant;
(10) The common name and geologic title, where applicable, of the mineral or minerals to be extracted;

(11) Provide proof of adequate insurance as required by this article;

(12) A quarrying and reclamation plan as is required by section seventeen of this article;

(13) Any other information required by the director reasonably necessary to effectuate the purposes of this article.

(c) The application for a permit shall be accompanied by copies of an enlarged United States geological survey topographic map meeting the requirements of the subdivisions below. Aerial photographs of the area are acceptable if the plan for reclamation can be shown to the satisfaction of the director. Attendant documentation must include:

(1) A map prepared and certified by or under the supervision of a registered professional civil engineer, or a registered professional mining engineer, or a licensed land surveyor, who shall submit to the director a certificate of registration as a qualified engineer or land surveyor, and be in a scale approved by the director;

(2) Identify the area to correspond with application;

(3) Show probable limits of adjacent underground mining operations, probable limits of adjacent inactive or mined-out areas and the boundaries of surface properties and names of surface and mineral owners of the surface area within five hundred feet of any part of the proposed disturbed area;

(4) Show the base of the crop line, including appropriate geologic cross sections, regrading cross sections and attendant narratives;
(5) Show the names and locations of streams, creeks, tributaries or bodies of public water, roads, buildings, cemeteries, active, abandoned or plugged oil and gas wells, and utility lines on the area of land to be disturbed and within five hundred feet of such area;

(6) Show by appropriate markings the boundaries of the area of land to be disturbed and the total number of acres involved in the area of land to be disturbed;

(7) The date on which the map was prepared, the north point, and the longitude and latitude of the operation;

(8) Show the drainage plan on and away from the area of land to be disturbed. Such plan shall indicate the directional flow of water, constructed drainage systems, natural waterways used for drainage, and the streams or tributaries receiving or to receive this discharge. Upon receipt of such drainage plan, the director may furnish the office of water resources of the division a copy of all information required by this subdivision, as well as the names and locations of streams, creeks, tributaries or bodies of public water within five hundred feet of the area to be disturbed;

(9) Show the presence of known acid-producing materials which when present in the overburden, may cause spoil with a pH factor below 5.5, preventing effective revegetation. The presence of such materials, wherever occurring in significant quantity, shall be indicated on the map, filed with the application for permit. The operator shall also indicate the manner in which acid-bearing spoil will be suitably prepared for revegetation and stabilization, whether by application of mulch or suitable soil material to the surface or by some other type of treatment, subject to approval of the director.

(10) The operator shall also indicate the manner in which all permanent disposal sites will be stabilized.
(11) The certification of the maps shall read as follows: "I, the undersigned, hereby certify that this map is correct, and shows to the best of my knowledge and belief all the information required by the quarrying laws of this state." The certification shall be signed and notarized. The director may reject any map as incomplete if its accuracy is not so attested.

(d) Each applicant shall secure a performance bond or other appropriate financial assurance and insurance as required by this article.

(e) A permit may cover more than one tract of land, if the tracts are adjacent or part of the same quarrying complex, and described in the application.

(f) If a permittee has more than one permit at any quarrying site at an adjacent, or the same quarrying complex, and if the director deems appropriate, permits may be consolidated into one permit at the request of the permittee.

(g) A permit remains valid until quarrying is completed and the final inspection and report are approved or until the permit is revoked by the director.

(h) All underground quarry operations which disturb more than five acres of surface must obtain a quarry permit, including underground quarry operations located on more than one tract of land, if the tracts are adjacent or part of the same mining complex and the total disturbed area exceeds more than five acres. Those underground operations which disturb less than five acres of surface must:

(1) File a notice of intent to operate with the director at least sixty days prior to disturbance. The notice of intent to operate shall be made in writing on forms prescribed by the director and shall be signed and verified by the operator. This notice shall include the information required by subdivisions
(1) through (11) and subdivision (13), subsection (b) of this section;

(2) The applicant shall publish a notice of intent to operate as a Class III legal advertisement in accordance with the provisions of article three, chapter fifty-nine of this code. The notice shall contain, in abbreviated form, the following:

(A) The name and address of the operator;

(B) The name and addresses of the surface and mineral owners;

(C) That written comments on the application will be accepted until a specified date, within thirty days after the first date of publication of the notice;

(D) A description of the general area where the quarry will be located;

(E) The address of the office of the division to submit written comments.

(3) The director shall issue a decision to approve or deny the notice of intent to operate, within thirty days of close of the public comment period, unless the period is extended by the director to receive additional application information. The director may deny or limit permission to operate upon the finding that the underground quarry will cause serious adverse environmental impacts pursuant to section seven or eight of this article.

(4) A minimum of a ten thousand dollar performance bond is required for each underground mining intent to operate. This performance bond shall be released if the permittee has complied with all permit requirements and has begun underground mining. Underground mining must begin within two years of receipt of a notice of intent to operate.
§22-4-6. Application review, public notice and comment, and permit approval.

(a) The director shall, upon receipt of an application for a permit, determine if the application is complete and contains the information required in the application. The director has thirty days to review the application for technical completeness. An application is complete when all required information has been submitted to the director. If the application is determined incomplete, the applicant shall be notified with written comments stating the deficiencies. If the director finds the application has technical deficiencies or other inadequacies which require further information, the thirty-day review period shall be interrupted on the date the notice is mailed to the applicant, and the time period shall resume upon receipt of the corrected and complete application. Should the applicant disagree with a decision of the director, the applicant may, by written notice, request a hearing before the director. The director shall hold the hearing within thirty calendar days of receipt of this notice. When a hearing has been held, the director shall notify the applicant of the decision by certified mail within twenty days of the hearing. An applicant aggrieved by a final order of the director may, after the hearing or without a hearing, appeal the order to the surface mine board. Any appeal to the board shall be taken without prejudice by the director in the final review of a permit application.

(b) Upon the director's determination that an application is complete, the applicant shall publish a notice of the application for a permit as a Class III legal advertisement in accordance with the provisions of article three, chapter fifty-nine of this code. The notice shall contain, in abbreviated form, the information required in the application. The notice shall state that written comments on the application will be accepted until a specified date, within thirty days after the first date of publication of the notice. The notice shall also state that a copy of the complete application including the quarrying and reclamation
plans and maps will be available for public inspection during the public comment period at the office of the county clerk in the county or counties in which the proposed permit area is located. The publication area of the notice required by this section is the county or counties in which any portion of the proposed permit area is located. The cost of all publications required by this section shall be the responsibility of the applicant.

(c) Prior to approval of any quarry mining permit, the division shall upon receipt of a written request of a person having expressed concern or objections to the proposed permit, cause a public hearing to be held in the locality where the quarry operation is proposed to be located for the purpose of receiving comment regarding the expected or perceived impacts of the quarry operation on the local area: Provided, That no public hearing is required for a notice of intent to operate an underground quarry with a surface disturbance less than five acres.

(d) The director shall receive and fully consider evidence or comments submitted during the public comment period by any member of the public.

(e) Within thirty days of close of the public comment period, upon the determination by the director that proper public notice has been given and comment has been received by the agency, and that the quarrying operation will be conducted consistent with the requirements of this article, then the director shall issue a quarry permit to the applicant.

(f) The director, upon receipt of comments expressing substantial new questions regarding the application, may reopen the public comment period.

§22-4-7. Denial of quarry permit.
The director may deny a permit application, modification or transfer for one or more of the following reasons:

1. Any requirement of federal or state environmental law, rule or regulation would be violated by the proposed permit.

2. The proposed quarry operation will be located in an area in the state which the director finds ineligible for a permit pursuant to section eight.

3. The applicant or any person required to be listed on the application pursuant to section five of this article has not corrected all violations of any prior permit issued pursuant to this article which resulted in:

   A. Revocation of a permit;

   B. Cessation of the operation by order of the director;

   C. Forfeiture of all or part of the permit bond or other surety; or

   D. A court order issued against the applicant related to mining or quarrying;

   E. The applicant or any person required to be listed on the application pursuant to section five of this article has not paid all fines or fees assessed by the agency or by court judgment imposed pursuant to the provisions of this article.

(b) An applicant whose application for a permit, modification or transfer was denied may petition the director for review of the denial decision. The director, in his or her discretion, may approve an application which was previously denied because of a past permit revocation or forfeiture if the person whose permit was revoked or bond forfeited pays into the abandoned quarry reclamation fund an amount determined by the director as adequate to reclaim the area disturbed under the prior permit or completes reclamation of site upon which the permit or bond
was revoked or forfeited, and demonstrates to the director's satisfaction that he or she will comply with this article and rules promulgated thereunder.

(c) The director may approve a portion of a permit area upon a finding that approval of the entire permit area would otherwise be denied pursuant to the provisions of this section.

§22-4-8. Limitations; mandamus.

The Legislature finds that there are certain areas in the state of West Virginia which are impossible to reclaim either by natural growth or by technological activity and that if quarrying is conducted in these certain areas such operations may naturally cause stream pollution, landslides, the accumulation of stagnant water, flooding, the destruction of land for agricultural purposes, the destruction of aesthetic values, the destruction of recreational areas and future use of the area and surrounding areas, thereby destroying or impairing the health and property rights of others, and in general creating hazards dangerous to life and property so as to constitute an imminent and inordinate peril to the welfare of the state, and that such areas shall not be mined by the surface-mining process.

Therefore, authority is hereby vested in the director to delete certain areas from all quarrying operations.

No application for a permit shall be approved by the director if there is found on the basis of the information set forth in the application or from information available to the director and made available to the applicant that the requirements of this article or rules hereafter adopted will not be observed or that there is not probable cause to believe that the proposed method of operation, backfilling, grading or reclamation of the affected area can be carried out consistent with the purpose of this article.

If the director finds that the overburden on any part of the area of land described in the application for a permit is such
that experience in the state of West Virginia with a similar type
of operation upon land with similar overburden shows that one
or more of the following conditions cannot feasibly be pre-
vented: (1) Substantial deposition of sediment in stream beds;
(2) landslides; or (3) acid-water pollution, the director may
delete such part of the land described in the application upon
which such overburden exists.

If the director finds that the operation will constitute a
hazard to a dwelling house, public building, school, church,
cemetery, commercial or institutional building, public road,
stream, lake or other public property, then he or she shall delete
such areas from the permit application before it can be ap-
proved.

The director shall not give approval to quarry within one
hundred feet of any public road, stream, lake, or state, national
or interstate park or other public property, and shall not approve
the application for a permit where the quarry operation will
cause adverse affects to these locations unless adequate
screening and other measures approved by the director are to be
utilized and the permit application so provides: Provided, That
the one-hundred-foot restriction does not include berms,
control structures and ways used for ingress and egress
to and from the minerals as herein defined and the transporta-
tion of the removed minerals, nor does it apply to the dredging
and removal of minerals from the streams or watercourses of
this state. The one hundred foot limitation may be waived only
when the director, upon consideration of local land uses, finds
that the land use of and near the permitted area will be signifi-
antly enhanced by an alteration of the topography within the
one hundred foot barrier. Mineral removal shall be prohibited
within twenty-five feet of all property lines: Provided, however,
that the twenty-five foot setback area may, where appropriate.
be used for tree planting, berms, visual barriers, vegetation,
control structures, access rights-of-way or any other purposes
approved by the director: Provided further, That existing berms,
barriers, stockpiles, roads and other structures in existence within the twenty-five foot setback prior to the effective date of this section may remain in place. The permittee must provide adequate revegetation within the setback, as is appropriate for the intended use.

Whenever the director finds that ongoing quarry operations are causing or are likely to cause any of the conditions set forth in the first paragraph of this section, he or she may order immediate cessation of such operations and he or she shall take such other action or make such changes in the permit as he or she may deem necessary to avoid said described conditions.

The failure of the director to discharge the mandatory duty imposed by this section is subject to a writ of mandamus, in any court of competent jurisdiction by any private citizen affected thereby.

§22-4-9. Permit renewals and revisions.

(a) Any valid permit issued pursuant to this article carries with it the right of successive renewal upon expiration with respect to areas within the boundaries of the existing permit. All permittees shall publish a Class I legal advertisement in accordance with the provisions of article three, chapter fifty-nine of this code.

(b) If an application for renewal of a valid permit includes a proposal to extend the quarry mining operation beyond the boundaries authorized in the existing permit, that portion of the application for renewal which addresses any new land area is subject to the requirements for permit modifications as provided in section ten of this article. Application for permit renewal shall be made at least one hundred twenty days prior to the expiration of the valid permit.

§22-4-10. Modification of permits.
(a) Prior to expanding or otherwise altering quarrying operations beyond the activities authorized under an existing quarry permit, a permittee shall obtain approval for modification from the director. The application shall be in writing on forms provided by the division, or the application may be submitted electronically. Applicants shall verify electronic submissions by signed affidavit. Information that remains unchanged from the initial application is not required to be resubmitted. A permit may be modified in any manner, so long as the director determines that the modification fully meets the requirements of all applicable federal and state law, regulations and rules, and that the modifications would be consistent with the issuance of the original permit.

(b) No modification of a permit which has been approved by the director becomes effective until any required changes have been made in the performance bond or other security posted under the provisions of sections twenty or twenty-two of this article to assure the performance of obligations assumed by the permittee under the permit and the quarrying and reclamation plan.

(c) A minor permit modification is one in which the proposed modification would not cause a significant departure from the terms and conditions of the existing permit and would not result in a significant impact to the environment or to nearby property.

(d) An application for a minor permit modification shall require information related to the modification, any impact it may have on the original permit area and adjacent property, quarrying and reclamation plans, and any other information deemed necessary by the director. An application for a minor permit modification requires public notice, but does not require a public hearing.
(e) Any application for a permit modification that is not a minor permit modification is a major permit modification. An application for a major permit modification must meet the same requirements as for a new permit application. Modification of a buffer zone of a quarry operation is always a major modification.

(f) The director shall act upon the application for a permit modification pursuant to the provisions of subsection (a) of section six of this article.

(g) The director may deny the application for a permit modification for the reasons and under the stated procedure as for new permits set forth in sections seven and eight of this article.

§22-4-11. Transfer of permits.

(a) When the interest of a permittee of any quarry operation is sold, leased, assigned, or otherwise disposed of, the director may transfer the permit and shall release the transferor from his or her liabilities imposed by this article or rules issued under this article if both the transferor and transferee have complied with the requirements of this article and the transferee in interest assumes the duties and responsibilities of the permit. The transferee shall provide applicable information as required by this article and shall meet public notice and comments requirements as required for major permit modifications.

(b) The proposed transferee shall pay a five hundred dollar fee with the filing of an application for transfer of permit.

(c) The director shall act upon the permit transfer as expeditiously as possible but not later than thirty days after the application forms and any supplemental information required are filed with the director.
(d) The director may deny the permit transfer for any reasons and under the same procedure set forth in sections seven and eight of this article. If the applicant proposes any change to the permit conditions, the director shall review the application and treat it as a modification as provided in this article.

(e) The director, for good cause shown, may allow transfer of a revoked permit if the transferee complies with the requirements of this article and assumes the duties and responsibilities of the permit.

(f) If the director denies an application to transfer a permit, the director shall give the permittee and the proposed transferee written notice of:

(1) The director’s determination;

(2) Any changes in the application which would make it acceptable; and

(3) The right of the permittee and the proposed transferee to a hearing before either or both the director or the surface mine board.

(g)(1) If a hearing before the director is not requested within fifteen days after receipt of the director’s notice of the denial, the denial is the director’s final order on the matter appealable to the surface mine board.

(2) If a hearing before the director is requested within fifteen days after receipt of the director’s notice, the date for the hearing may not be less than fifteen days nor more than thirty days after the date of the request unless the parties mutually agree on another date.

(3) The director shall enter a final order granting or denying the transfer application within thirty days after the hearing.
§22-4-12. Pre-blast survey requirements.

(a) For all new permits issued after the effective date of this section, at least thirty days prior to commencing blasting, an operator or an operator's designee shall make the following notifications in writing to all owners and occupants of protected structures that the operator or operator's designee will perform pre-blast surveys in accordance with subsection (f) of this section. The required notifications shall be to all owners and occupants of protected structures within one thousand five hundred feet of the blasting area.

(b) For quarries in operation as of the effective date of this section, the quarry operator within one year, shall conduct a pre-blast survey of the first protected structure within one thousand feet of the blasting area. Any property owner may, at their own expense, pay for a pre-blast survey meeting the provisions of this article, for his or her protected structure to assess the impact of future blasts to those dwellings or structures by an existing quarry.

(c) An occupant or owner of a man-made dwelling or structure within the areas described in subsection (a) of this section, may waive the right to a pre-blast survey in writing. If a dwelling is occupied by a person other than the owner, both the owner and the occupant must waive the right to a pre-blast survey in writing. If an occupant or owner of a man-made dwelling or structure refuses to allow the operator or the operator's designee access to the protected structure and refuses to waive in writing the right to a pre-blast survey or to the extent that access to any portion of the structure, underground water supply or well is impossible or impractical under the circumstances, the pre-blast survey shall indicate that access was refused, impossible or impractical. The operator or the operator's designee shall execute a sworn affidavit explaining the reasons and circumstances surrounding the refusals.
(d) If a pre-blast survey was waived by the owner and was within the requisite area and the property is sold, the new owner may request a pre-blast survey from the operator.

(e) An owner within the requisite area may request, from the operator, a pre-blast survey on structures constructed after the original pre-blast survey.

(f) The pre-blast survey shall include:

1. The names, addresses or description of structure location and telephone numbers of the owner and the residents of the structure being surveyed and the structure number from the permit blasting map;

2. The current home insurer of the owner and the residents of the structure;

3. The names, addresses and telephone numbers of the operator and the permit number;

4. The current general liability insurer of the operator;

5. The name, address and telephone number of the person or firm performing the pre-blast survey;

6. The current general liability insurer of the person or firm performing the pre-blast survey;

7. The date of the pre-blast survey and the date it was mailed or delivered to the director;

8. A general description of the structure and its appurtenances including, but not limited to: (A) The number of stories; (B) the construction materials for the frame and the exterior and interior finish; (C) the type of construction including any unusual or substandard construction; and (D) the approximate age of the structure;
(9) A general description of the survey methods and the direction of progression of the survey, including a key to abbreviations used;

(10) Written documentation and drawings, videos or photographs of the pre-blast defects and other physical conditions of all structures, appurtenances and water sources which could be affected by blasting;

(11) Written documentation and drawings, videos or photographs of the exterior and interior of the structure to indicate pre-blast defects and condition;

(12) Written documentation and drawings, videos or photographs of the exterior and interior of any appurtenance of the structure to indicate pre-blast defects and condition;

(13) Sufficient exterior and interior photographs or videos, using a variety of angles, of the structure and its appurtenances to indicate pre-blast defects and the condition of the structure and appurtenances;

(14) Written documentation and drawings, videos or photographs of any unusual or substandard construction technique and materials used on the structure and/or its appurtenances;

(15) Written documentation relating to the type of water supply, including a description of the type of system and treatment being used, an analysis of untreated water supplies, a water analysis of water supplies other than public utilities, and information relating to the quantity and quality of water;

(16) When the water supply is a well, written documentation, where available, relating to the type of well; the well log; the depth, age and type of casing or lining; the static water level; flow data; the pump capacity; the drilling contractor; and the source or sources of the documentation;
(17) A description of any portion of the structure and appurtenances not documented or photographed and the reasons;

(18) The signature of the person performing the survey; and

(19) Any other information required by the director which additional information shall be established by rule in accordance with article three, chapter twenty-nine-a of this code.

(g) The director may require a pre-blast survey as a condition of a major permit modification, upon a finding that the proposed blasting area will occur within one thousand five hundred feet from a protected structure, and will be of a nature and intensity to potentially cause blasting damage.

§22-4-13. Blasting restrictions; blasting formula; filing preplan; site specific blasting requirements; penalties; notice.

(a) Where blasting of overburden or mineral is necessary, the blasting shall be done in accordance with established principles for preventing injury to persons and damage to residences, buildings and communities, and comply with the following:

(1) The weight in pounds of explosives to be detonated in any period less than an eight millisecond period without seismic monitoring shall conform to the following scaled distance formula: \( W = \left(\frac{D}{50}\right)^2 \). Where \( W \) equals weight in pounds of explosives detonated at any one instant time, then \( D \) equals distance in feet from nearest point of blast to nearest residence, building or structure, other than operation facilities of the mine: Provided, That the scaled distance formulas need not be used if a seismograph measurement is located at the nearest protected structure is recorded and maintained for every blast. If access to the structure is refused by the owner of the protected structure, the measurement may be taken as close as practicable between the blast site and the
protected structure. The peak particle velocity in inches per second in any one of the three mutually perpendicular directions shall not exceed the following values at any protected structure:

| Seismograph Measurement Distance to the Nearest Protected Structure |
|-----------------------------|-------------------|
| 1.25                         | 0 - 300 feet      |
| 1.00                         | 301 - 5,000 feet  |
| 0.75                         | 5,001 feet or greater |

The maximum ground vibration standards do not apply to the structures owned by the permittee and not leased to another person and structures owned by the permittee and leased to another person, if a written waiver by the lessee is submitted to the director before blasting.

(2) Airblast shall not exceed the maximum limits listed below at the location of any dwelling, public buildings, school or community or institutional building outside the permit area:

<table>
<thead>
<tr>
<th>Lower frequency limit of measuring system in Hz(+3dB)</th>
<th>Maximum level in dB</th>
</tr>
</thead>
<tbody>
<tr>
<td>1Hz or lower-flat response*</td>
<td>134 peak</td>
</tr>
<tr>
<td>2Hz or lower-flat response</td>
<td>133 peak</td>
</tr>
<tr>
<td>6Hz or lower-flat response</td>
<td>129 peak</td>
</tr>
<tr>
<td>c-weighted-slow response*</td>
<td>105 peak dBC</td>
</tr>
</tbody>
</table>

* only when approved by the director.

(3) Access to the blast area shall be controlled against the entrance of unauthorized personnel during blasting for a period
thereafter until an authorized person has reasonably determined that:

(A) No unusual circumstances exist such as imminent slides or undetonated charges, etc.; and

(B) Access to and travel in or through the area can be safely resumed.

(4) A plan of each operation’s methods for compliance with this section (blast delay design) for typical blasts which shall be adhered to in all blasting at each operation, shall be submitted to the division of environmental protection with the application for a permit. It shall be accepted if it meets the scaled distance formula established in subdivision (1) of this section.

(5) Records of each blast shall be kept in a log to be maintained for at least three years, which will show for each blast the following information:

(A) Date and time of blast;

(B) Number of holes;

(C) Typical explosive weight per delay period;

(D) Total explosives in blast at any one time;

(E) Number of delays used;

(F) Weather conditions;

(G) Signature of operator employee in charge of the blast;

(H) Seismograph data; and

(I) Date of seismograph calibration.

(b) Blasting within one thousand feet of a protected structure shall have a site specific blast design which may vary from the requirements of this section as is approved by the
director. The site specific blast plan shall limit the type of explosive and detonating equipment, the size, timing and frequency of blasts to: Prevent injury to persons; prevent damage to public and private property outside the permit area; prevent adverse impacts to any underground mine; and to minimize dust outside the permit area: Provided, That for quarries permitted pursuant to section twenty-seven, site specific blasting plan will not be required if not required as part of its existing blasting plan, unless the director determines that based on valid local complaints, the local conditions require a site specific blasting plan.

(c) All assessments as set forth in this section shall be assessed by the director, collected by the director and deposited with the treasurer of the state of West Virginia, to the credit of the quarry reclamation fund.

(d) The director shall propose legislative rules pursuant to article three, chapter twenty-nine-a of this code which shall provide for a warning of impending blasting to the owners, residents or other persons who may be present on property adjacent to the blasting area.

(e) Where inspection by the division of environmental protection establishes that the scaled distance formula or the seismograph results or the approved preplan are not being adhered to, the following penalties shall be imposed:

(1) For the first offense in any one permit year under this section, the permit holder shall be assessed not less than five hundred dollars nor more than one thousand dollars;

(2) For the second offense in any one permit year under this section, the permit holder shall be assessed not less than one thousand dollars nor more than five thousand dollars;

(3) For the third offense in any one permit year under this section or for the failure to pay any assessment herein above set
forth within a reasonable time established by the director, the
permit shall be revoked.

§22-4-14. Performance standards.

Each permit issued by the director pursuant to this article
shall require the quarry operation, at a minimum, to meet the
following performance standards:

(a) The operator shall impound, drain or treat all runoff
water so as to reduce soil erosion, damage to agricultural lands
and prevent unlawful pollution of streams and other waters. The
director shall require as a condition of a new permit, groundwa-
ter testing prior to and during quarrying. Tests shall be for both
quantity and quality of surrounding groundwaters. Groundwater
test sites above and below gradient of the proposed quarry shall
be established prior to quarrying to establish a six months
baseline for area groundwater. Test wells, seeps and springs
may be utilized as is appropriate. Monthly testing shall be done
prior to the beginning of quarrying, and quarterly monitoring
the first year of quarrying. Annual testing is to be done for an
additional four years. If no adverse impact to groundwater is
discovered, no further monitoring will be required. However,
upon subsequent discovery of possible adverse impact, the
director may require monthly monitoring and appropriate
remedial actions to be done by the permittee.

(b) In the case of storm water accumulations or any
breakthrough of water, adequate treatment shall be undertaken
by the operator so as to prevent pollution occurring from the
release of water. Treatment may include check-dams, settling
ponds and chemical or physical treatment. In the case of a
breakthrough of water, when it is possible, the water released
shall be impounded immediately. All water so impounded shall
receive adequate treatment by the operator before it is released
into the natural drainway.
(c) Water leaving the permit area is subject to the requirements of article eleven of this chapter.

(d) The permittee shall place a monument as prescribed by the division in an approved location near the operation. If a quarry operation is under a single permit and is not geographically continuous, the permittee shall locate additional monuments and submit additional maps, as required by section five of this article, before mining other permitted areas.

(e) The operator shall remove or properly dispose of all metal, equipment and other refuse resulting from the operation. No permittee may engage in or allow, the throwing, dumping, piling or otherwise placing of any overburden, stones, rocks, coal, mineral, earth, soil, dirt, debris, trees, wood, logs or other materials or substances of any kind or nature beyond or outside the area of land which is under permit for which bond has been posted, unless it is placed on a site which has a permit allowing that activity, nor may any operator place any of the foregoing listed materials in a way that normal erosion or slides brought about by natural physical causes will permit the same to go beyond or outside the area of land which is under permit and for which bond has been posted.

(f) Prior to beginning quarrying operations, the operator shall install, certify, and maintain a drainage system in accordance with the approved drainage control plan. Lateral drainage ditches connecting to natural or man-made waterways shall be constructed to control water runoff, prevent erosion and provide adequate drainage control. The depth and width of natural drainage ditches and any other diversion ditches may vary depending on the length and degree of slope.

(g) When the planting of an area has been completed and full or partial bond release is requested the operator shall file a planting report with the director on a form to be prescribed and furnished by the director providing the following information:
(1) Identification of the operation;

(2) The types and rate of application of planting or seeding, including mixtures and amounts;

(3) Types and rates of fertilizer and any other chemicals used or added to the soil;

(4) The date of planting or seeding;

(5) The area of land planted; and

(6) Other relevant information required by the director.

All planting shall be certified by the permittee, or by the party with whom the permittee contracted for planting.

(h) All fill and cut slopes of the operation and haulage ways shall be seeded and planted in a manner as prescribed by the quarrying and reclamation plan.

(i) After quarrying is completed, the site will be stabilized to prevent erosion. Stabilization may be accomplished by vegetative cover or other means as approved in the quarrying and reclamation plan. Rules proposed pursuant to this article shall contain guidelines for establishing the various types of stabilization.

(j) Planting shall be carried out so that it is completed before the end of the first planting season. Vegetative planting may be completed by the operator or the permittee may contract with the local soil conservation district or a private contractor. A revegetation schedule shall be incorporated into the quarrying and reclamation plan.

(k) The operator may, where appropriate, use visual screening methods such as berms, plantings, or fences which may be placed within the buffer where conditions allow and where the site is readily visible to the general public.
(l) If the permittee or other person desires to conduct underground quarrying upon the premises or use underground quarry surface haulage ways for other lawful purposes, the permittee may designate locations to be used for these purposes where it will not be necessary to backfill if required by the permit, until the underground quarrying or other uses is completed, during which time the bond on file for that portion of that operations may not be released. Locations shall be described on the map required by the provisions of section five of this article.

(m) The operator shall also comply with all other permit conditions and requirements of this article and any rules promulgated thereunder.


The Groundwater Protection Act provisions contained in subsection (b), section four, article twelve of this chapter do not apply to mineral extraction areas of quarry mining sites regulated under this article. All other areas of the mine, including groundwater beneath the mineral extraction area, and water discharges from the quarry shall meet the requirements of article twelve of this chapter.

§22-4-16. Water rights and replacement; waiver of replacement.

(a) Nothing in this article affects the rights of any person to enforce or protect, under applicable law, that person's interest in water resources affected by removal of mineral resources.

(b) Any permittee shall replace the water supply of an owner of interest in real property who obtains all or part of the owner’s supply of water for domestic, agricultural, industrial or other legitimate use from an underground or surface source where the supply has been affected by contamination, diminution or interruption proximately caused by the mineral removal and associated activities, unless right of replacement is waived by
the owner or unless the water supply is furnished by a public service district, municipality, government entity or some other third party.

(c) A public service district, municipality, government entity, or other party may contract with a permittee to obtain water and waive the replacement of water supply if contamination, diminution, or interruption should occur.

(d) If the director determines that: (1) Contamination, diminution or damage to an owner's underground water supply exists; and (2) the contamination, diminution, or damage to the
(b) The quarrying and reclamation plan is required to be completed by a person approved by the director. It shall include the following information:

(1) The purpose for which the land to be permitted was previously used;

(2) The proposed useful purposes of the land following completion of quarrying;

(3) A general description of the manner in which the land is to be opened for quarrying and how the quarrying activity is to progress across the permitted area and an approximate time frame for reclamation of each area or phase of the quarrying;

(4) The manner in which topsoil is to be conserved and used in reclamation and, if conditions do not permit conservation and restoration of all or part of the topsoil, an explanation of the conditions and proposed alternative procedures;

(5) The description of the proposed final topography for the applicant's proposed land use after reclamation is completed and the proposed method of accomplishment;

(6) The practices to provide public safety for adjacent properties and provisions for fencing, berms or other site improvements reasonably necessary to assure safety at the permitted site after mining and reclamation is completed; and

(7) The manner and type of revegetation or other surface treatment of the disturbed area.

(c) An application for a permit shall indicate the existence of known, threatened or endangered species located within the proposed permit boundary as defined by federal Endangered Species Act of 1973.
(d) The application shall provide the information on slope gradient and fill plans as required in section eighteen of this article.

§22-4-18. Land reclamation requirements.

(a) Quarries shall meet the final design requirements for slopes and gradients:

(1) Final slope gradients of fill areas shall be designed using recognized standards and certified by a professional engineer or other approved professional specialist, except for backfill within the mineral excavation pit area, where no standard applies.

(2) The designed steepness and proposed treatment of the final slopes shall take into consideration the physical properties of the slope material, its probable maximum water content, landscaping requirements and other factors and may range from ninety degrees in a sound limestone or similar hard rock to less than twenty degrees in unconsolidated materials.

(3) The quarrying and reclamation plan shall specify slope angles flatter than the critical gradient for the type of material involved.

(4) The toe of the proposed fill will rest on natural slopes no steeper than twenty degrees unless a detailed geotechnical study of the toe foundation area is completed. The results of this study and subsequent stability evaluations must assure a static safety factor of at least one and one-half. Engineering designs for fills constructed on natural slopes steeper than twenty degrees may require over excavation of the toe area to rock, incorporation of toe buttresses or other engineered configurations to enhance stability. The design and construction of all fills proposed on natural slopes steeper than twenty degrees shall be certified by a registered professional engineer.
(5) Constructed slope fills steeper than two horizontal to one vertical must exhibit a static safety factor of one and one-half.

(6) Fills may be constructed so that the outer slope shall be no steeper than two horizontal to one vertical. A twenty foot wide bench shall be installed at a maximum of every fifty feet in vertical height of the fill with a one percent to five percent slope toward a constructed protected channel or natural drainway: Provided, That constructed fill slopes may be steeper than two horizontal to one vertical if they meet a static safety factor of one point five (1.5) and are certified by a registered professional engineer.
(c) Backfills, fills, cut slopes or highwalls that exist and are part of a permit area prior to the effective date of this article are not required to comply with subdivisions (1) through (8), subsection (a) of this section. Permits issued prior to the effective date of this section which contain the requirements of subdivisions (1) and (2), subsection (a) or subsection (b) of this section are not exempt unless modified by the division.

(d) The final land form shall be graded to provide positive drainage throughout the permit area except areas that are to be inundated in accordance with the quarrying and reclamation plan map.
§22-4-19. Time period for reclamation.

(a) The operator shall commence the reclamation of the incremental area of land disturbed by the operator after the completion of all quarrying of that area in accordance with the approved quarrying and reclamation plan. The quarrying and reclamation plan for each operation shall be site specific in describing how the quarrying and reclamation activities are to be coordinated to minimize total land disturbance and to keep reclamation operations as contemporaneous as possible with the advance of the quarry operations. All quarry operations shall be conducted in compliance with the approved quarrying and reclamation plan and the requirements of this article.

(b) At the option of the permittee and with the director's concurrence, a quarry permit may be inactive for a time so specified by the director, during which no mineral or overburden is removed if the following conditions are met:

1. That economically viable mineral reserves remain in the permitted area;
2. All disturbed areas are reclaimed or stabilized to prevent erosion and sedimentation;
3. All drainage and sediment control structures, such as culverts, ditches, sediment basins and traps are maintained; and
4. All vegetation is maintained and reseeded as necessary.

(c) Any permit which is not in operation and has failed to apply for inactive status within six months is deemed an abandoned quarry.

§22-4-20. Fiscal responsibility.

(a) Each applicant must provide a certificate of insurance issued by an insurance company authorized to do business in this state for all operators at the site including blasting and
4 quarrying operators. Blasting insurance is not required of quarry operations which do not conduct blasting. The coverage shall include not less than one million dollars for personal injury per occurrence, and not less than five hundred thousand dollars for property damage per occurrence. Proof of continuing insurance coverage shall be required on an annual basis. In addition, the insurance company shall promptly notify the director of any lapses, default, nonrenewal, cancellation, or termination of coverage.

(b) Each applicant who makes application for a new permit under section five of this article shall furnish a performance bond after permit approval but before its issuance, on a form to be prescribed and furnished by the director, payable to the state of West Virginia and conditioned that the permittee faithfully performs all of the requirements of this article. The bond or bonds shall cover the entire area disturbed by quarrying plus the estimated number of acres to be disturbed in the upcoming year. As additional areas outside the bonded acreage are needed to facilitate the quarry operation, the permittee shall file an additional bond or bonds to cover the additional acreage with the director. The bond shall be posted and accepted by the director prior to disturbing an area for quarrying.

(c) The amount of the bond shall be at least one thousand dollars for each acre or fraction of an acre of land to be disturbed. The director shall determine the amount per acre of the bond that is required before a permit is issued. The minimum amount of bond required is ten thousand dollars.

(d) In lieu of a performance bond covering the entire permitted area, the director may accept incremental bonding. If incremental bonding is used, as succeeding increments of quarry operations are to be initiated and conducted within the permit area, the permittee shall file with the director an additional bond or bonds to cover the increments in accordance with this section.
(e) The applicant may elect to execute the performance, surety bonding, collateral bonding, establishment of an escrow account, performance bonding fund participation, self-bonding or a combination of these methods.

(f) If collateral bonding is used, the applicant may elect to deposit cash, or collateral securities or certificates as follows: Bonds of the United States or its possessions, of the federal land bank, or of the homeowners' loan corporation; full faith and credit general obligation bonds of the state of West Virginia, or other states, and of any county, district or municipality of the state of West Virginia or other states; or certificates of deposit
perform in the manner set forth in the approved quarrying and
reclamation plan or to reclaim the land as provided for in the
permit or upon revocation of the permit. The director shall
notify the permittee by certified mail, return receipt requested,
of its intention to initiate forfeiture proceedings. The permittee
has thirty days to request a hearing before the director. The
director shall render a decision within thirty days of the hearing.
Where the operation has deposited cash or securities as collat-
eral in lieu of corporate surety, the director shall declare said
collateral forfeited and shall direct the state treasurer to pay said
funds into the “quarry reclamation fund” as created in section
twenty-three of this article, to be used by the director to effect
proper reclamation and to defray the cost of administering this
article. Should any corporate surety fail to promptly pay in full
the forfeited bond, it is disqualified from writing any further
surety bonds under this article.

(i) Additional bond procedures shall be provided in
legislative rules proposed by the director and promulgated in
accordance with the provisions of chapter twenty-nine-a of this
code.

(j) The liability under the bond is for the duration of the
permit and for a period of two years after reclamation unless
previously released, in whole or part, as provided in section
twenty-one of this article.


On completion of the reclamation, and after the require-
ments of the permit have been fully complied with, the director
shall release the bond. An amount of the bond or cash deposit,
proportioned to the reclaimed portion of the disturbed land in
ratio to all of the disturbed land covered by the permit, may be
released on application by the permittee and inspection and
approval by the director. Performance bonds shall be released
upon acceptance into the bond pooling fund and payment of the
required fees. Performance bonds for the transferor of a permit shall be released after the transferee posts a bond acceptable to the director.

§22-4-22. Bond pooling fund.

(a) Quarry operators who have operated for five years without a serious violation under previous West Virginia mining law or the provisions of this article, in lieu of the bonding requirements of section twenty of this article, shall contribute to the "Bond Pooling Fund," as provided in this section.

(b) For each quarry, permittees contributing to the pool shall make an initial payment to the fund of fifty dollars for each acre currently disturbed plus each acre estimated to be newly disturbed during the next ensuing year. Thereafter, the permittee shall make an annual payment of twelve dollars and fifty cents for each disturbed acre plus each acre estimated to be newly disturbed during the next ensuing year. The payments shall continue until the permittee has paid into the bond pooling fund a total of one thousand dollars for each disturbed acre.

(c) There is hereby created in the state treasury a special revenue fund known as the "Bond Pooling Fund". The fund shall operate as a special fund whereby all deposits and payments thereto do not expire to the general revenue fund, but shall remain in the fund and be available for expenditure in succeeding fiscal years. This fund shall consist of fees collected by the director in accordance with the provisions of this article. Interests of moneys from this fund shall be deposited in the quarry reclamation fund as established in section twenty-three of subsection (b) of this section. Interest earned on moneys in this fund shall be deposited in the quarry reclamation fund as established in section twenty-three of this article.

(d) No annual bond pooling fund deposits may be collected from permittees where the permit bond pooling fund deposits
divided by the number of disturbed acres bonded is equal to or greater than one thousand per acre.

(e) Permittee deposits into the bond pooling fund shall be released under any of the following conditions:

(1) On completion of the quarrying and reclamation, and after all permit requirements have been fully complied with, the director shall return all bond pooling fund deposits to the permittee consistent with the bonding release requirements of section twenty-one of this article.

(2) When the bond pooling fund balance for a permittee exceeds one thousand dollars for each disturbed acre and each acre estimated to be disturbed during the next ensuing year the director shall return the excess funds to the permittee.

(f) The interest transferred to the quarry reclamation fund under subsection (c) of this section shall be used to reclaim abandoned quarry lands as provided in section twenty-three of this article.

(g) If a permit is revoked pursuant to this article the payments that the permittee has made to the bond pooling fund for that permit shall be forfeited. The director shall use those forfeited payments for the reclamation of the quarry to which it applied.

(h) If the cost of reclamation exceeds the amount of payments the permittee shall be liable for the reclamation costs that exceed the permittee’s payments to the bond pooling fund.

§22-4-23. Quarry reclamation fund.

(a) All funds received by the division from forfeiture of bonds, civil administrative penalties, or interest from the bond pooling fund shall be deposited into a special interest-bearing account in the state treasury designated the “Quarry Reclama-
tion Fund." The quarry reclamation fund shall be used by the division for reclamation of abandoned quarries.

(b) If the forfeiture of a performance bond or bonding pool fund payments exceeds the cost of reclamation for which the liability was charged, any excess amount shall be deposited into the quarry reclamation fund.

(c) Reclamation projects that are to be financed by the quarry reclamation fund shall be designed by the division.

(d) The director shall administer and approve all expenditures from the quarry reclamation fund.

(e) The division shall compile a list of abandoned quarries in the state and rank them in order of need for reclamation.

§22-4-24. Orders, inspections and enforcement; permit revocation, damages, civil and criminal penalties.

(a) The director may at reasonable times without prior notice and upon presentation of appropriate credentials, enter any quarry and conduct periodic inspections and examine any required documentation to effectively implement and enforce the provisions of this article and rules promulgated thereunder.

(b) Whenever the director finds that an ongoing quarry operation is causing or is likely to cause imminent and substantial harm to the environment, public safety, or public health, the director may order immediate cessation of such operations, or portions of operations, and shall take other action as is deemed necessary to avoid adverse impact to the area.

(c) If the director, upon inspection or investigation observes, discovers or learns of a violation of this article, rules promulgated thereunder, or any permit condition or order issued under this article, he or she shall:
(1) Issue an order stating with reasonable specificity the nature of the alleged violation and requiring compliance immediately or within a specified time. An order under this section includes, but is not limited to, any or all of the following: Notice of noncompliance, orders suspending, revoking or modifying permits, consent agreements which provide opportunity for correction without further agency action, orders requiring a permittee to take remedial action within a specified time, and cease and desist orders;

(2) Seek an injunction in accordance with subsection (g) of this section;

(3) Revoke the permit and pursue an appropriate remedy as provided in this section;

(4) Institute a civil action in accordance with subsection (g) of this section; or

(5) Request the prosecuting attorney of the county wherein the alleged violation occurred, to bring an appropriate action, either civil or criminal in accordance with subsection (g) or (h) of this section.

(d) If the operator has not reached an agreement with the director or has not complied with the requirements set forth in the notice of noncompliance or order of suspension within the time limits set therein, the permit may be revoked by order of the director and the performance bond or contributions to the bonding pooling fund shall then be forfeited. If an agreement satisfactory to the director has not been reached within thirty days after suspension of any permit, any and all suspended permits shall then be declared revoked and the performance bonds or contributions to the bond pooling fund with respect thereto forfeited.

(e) Any person who violates any provision of this article, any permit condition or any rule or order issued pursuant to this
article is subject to a civil administrative penalty, to be levied by the director, of not more than five thousand dollars for each day of such violation, not to exceed a maximum of twenty thousand dollars. The director may accept in kind assessment by reclamation of an abandoned quarry site in lieu of cash payment of a civil administrative penalty.

In assessing any such penalty, the director shall take into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements as well as any other appropriate factors as may be established by rules promulgated pursuant to this article and article three, chapter twenty-nine-a of this code. No assessment shall be levied pursuant to this subsection until after the alleged violator has been notified by certified mail or personal service. The notice shall include a reference to the section of the statute, rule, order or statement of permit conditions that was allegedly violated, a concise statement of the facts alleged to constitute the violation, a statement of the amount of the administrative penalty to be imposed and a statement of the alleged violator’s right to an informal hearing. The alleged violator has twenty calendar days from receipt of the notice within which to deliver to the director a written request for an informal hearing. If no hearing is requested, the notice becomes a final order after the expiration of the twenty-day period. If a hearing is requested, the director shall inform the alleged violator of the time and place of the hearing.

The director may appoint an assessment officer to conduct the informal hearing and then make a written recommendation to the director concerning the assessment of a civil administrative penalty. Within thirty days following the informal hearing, the director shall issue and furnish to the alleged violator a written decision, and the reasons therefor, concerning the assessment of a civil administrative penalty. Within thirty days after notification of the director’s decision, the alleged violator may request a formal hearing before the surface mine board.
The authority to levy a civil administrative penalty is in addition to all other enforcement provisions of this article and the payment of any assessment does not affect the availability of any other enforcement provision in connection with the violation for which the assessment is levied. No combination of assessments against a violator under this section shall exceed five thousand dollars for each day of such violation: Provided, That any violation for which the violator has paid a civil administrative penalty assessed under this section shall not be the subject of a separate civil penalty action under this article to the extent of the amount of the civil administrative penalty paid. All administrative penalties shall be levied in accordance with this article and rules issued pursuant to this article. The net proceeds of assessments collected pursuant to this subsection shall be deposited in the quarry reclamation fund established in section twenty-three of this article. No assessment levied pursuant to this subsection becomes due and payable until the procedures for review of such assessment as set out herein have been completed.

(f) Any person who violates any provision of this article, any permit condition, rule or order issued pursuant to this article is subject to a civil penalty not to exceed five thousand dollars for each day of such violation, which penalty shall be recovered in a civil action either in the circuit court wherein the violation occurs or in the circuit court of Kanawha County.

(g) The director may seek an injunction, or may institute a civil action against any person in violation of any provisions of this article or any permit condition, rule or order issued pursuant to this article. In seeking an injunction, it is not necessary for the director to post bond nor to allege or prove at any stage of the proceeding that irreparable damage will occur if the injunction is not issued or that the remedy at law is inadequate. An application for injunctive relief or a civil penalty action under this section may be filed and relief granted notwithstanding the fact that all administrative remedies
provided for in this article have not been exhausted or invoked
against the person or persons against whom such relief is
sought.

(h) Any person who willfully or negligently violates the
provisions of this article, any permit condition or any rule or
order issued pursuant to this article is subject to the same
criminal penalties as set forth in section twenty-four, article
eleven of this chapter.

(i) Upon request of the director, the prosecuting attorney of
the county in which the violation occurs shall assist the director
in any civil or criminal action under this section.

(j) In any civil action brought pursuant to the provisions of
this section, the state, or any agency of the state which prevails,
may be awarded costs, reasonable attorney's fees, and, when a
permit has been revoked, any actual costs incurred by the
agency to complete reclamation of a permitted site above and
beyond moneys received as a result of bond forfeiture.

(k) In addition to and notwithstanding any other penalties
provided herein, any operator who directly causes damage to
the property of others as a result of quarrying is liable to them,
in an amount not in excess of three times the provable amount
of such damage, if and only if such damage occurs before or
within one year after such operator has completed all reclama-
tion work with respect to the land on which such quarrying was
carried out and all bonds of such operator with respect to such
reclamation work are released. Such damages are recoverable
in an action at law in any court of competent jurisdiction.

(l) The director may reinstate a revoked permit and allow
resumption of quarrying upon a finding that the circumstance
causing the revocation has been abated and the director has
determined that the cause of the revocation will not reoccur
upon reinstatement.
(m) It is unlawful for the owner or owners of surface rights or the owner or owners of mineral rights to interfere with the operator in the discharge of the operator’s obligation to the state for the reclamation of lands disturbed by the operator. The director may initiate an action pursuant to either subsection (g) or (h) of this section, to enforce this prohibition.

§22-4-25. Appeals to board.

Any person claiming to be aggrieved or adversely affected by any ruling or order of the director or his or her failure to enter an order may appeal to the surface mine board, pursuant to the provisions of article one, chapter twenty-two-b of this code, for an order vacating or modifying the ruling or order, or for an order that the director should have entered.

§22-4-26. Required fees, quarry inspection and enforcement fund.

The permit application fee is one thousand dollars. The fee for the original permit is one thousand dollars. The permit renewal fee of five hundred dollars shall be submitted with the renewal application and a progress report map. The fee for transferring a permit is five hundred dollars. The fee for a minor permit modification is two hundred dollars and for major modifications, five hundred dollars. There is hereby created in the state treasury a special revenue fund known as the “Quarry Inspection and Enforcement Fund”. The fund shall operate as a special fund whereby all deposits and payments thereto do not expire to the general revenue fund, but shall remain in the fund and be available for expenditure in succeeding fiscal years. This fund shall consist of fees collected by the director in accordance with the provisions of this section, as well as interest earned on investments made from moneys deposited in the fund. Moneys from this fund shall be expended by the director for the administration, permitting, enforcement, inspection, monitoring and other activities required by this article.

§22-4-27. Exception for certain existing quarries.
(a) Quarries that are in operation on or before the effective date of this article, shall comply with the following:

(i) Within two years of the effective date of this article, all quarry operations shall submit to the director a quarrying and reclamation plan to bring the facility into compliance with the requirements of this article and any rules promulgated thereunder. These quarrying and reclamation plans shall include a reasonable schedule, based on site specific conditions and the nature of the quarry operation, to allow a transitional time period to bring the operation into compliance with current reclamation standards. Quarry areas that are disturbed on the effective date of this article are exempt from further reclamation requirements. For the purpose of this section, disturbed areas include existing highwalls and all material vertically below the surface of the area disturbed.

(2) Pre-blast survey and blasting plan requirements as provided for existing quarries as provided by section twelve of this article.

(3) Groundwater protection monitoring required by section fourteen of this article will not be required if the director verifies the operator's certification that no groundwater problems at the quarry have occurred in the previous five years.

(b) The exclusions of this section are also applicable to quarries permitted on or before the effective date of this article and consolidated or renewed pursuant to subsection (f) of section five of this article.

(c) Quarries in operation as of the effective date of this article for the past five years without a serious permit violation, shall participate in the bond pooling fund created in section twenty-two of this article. All other operations shall comply with the bonding requirements of section twenty of this article.
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No public officer or employee in the division having any responsibility or duty either directly or of a supervisory nature with respect to the administration or enforcement of this article may:

1. Engage in quarrying as a sole proprietor or as a partner;
2. Be an officer, director, stockholder, owner or part owner of any corporation or other business entity engaged in quarrying; or
3. Be employed as an attorney, agent or in any other capacity by any person, partnership, firm, association, trust or corporation engaged in quarrying.

Any violation of this section by any public officer or employee subject to the prohibitions contained in this section is grounds for removal from office or dismissal from employment, as the case may be.

§22-4-29. Exemptions.

(a) The provisions of this article do not apply to activities of the West Virginia department of transportation or any legally constituted public governing entities including municipal corporations or other political subdivisions, including the federal government, or to activities of any person acting under contract with any of these public agencies or entities, on highway rights-of-way or borrow pits owned, operated, or maintained solely in connection with the construction, repair and maintenance of the public roads system of the state or other public facilities. This exemption does not become effective until the public agencies or entities have adopted reclamation standards applying to the activities.

(b) The provisions of this article do not apply to quarrying on federal lands when performed under a valid permit from the appropriate federal agency having jurisdiction over the land.
(c) The provisions of this article do not apply to the following activities:

(1) Operations engaged only in processing minerals;

(2) Excavation or grading conducted solely in aid of on-site farming or on-site construction for purposes other than quarrying;

(3) Removal of overburden and of limited amounts of any mineral when done only for the purpose of prospecting and to the extent necessary to determine the location, quantity or quality of any natural deposit, if no minerals are sold, processed for sale or consumed in the regular operation of business;

(4) The handling, processing or storage of minerals on the premises of a manufacturer as a part of any manufacturing process that requires minerals as raw material;

(5) The removal or deposit of backfill material associated with construction, farming and noncommercial activities;

(6) Noncommercial quarry operations by a landowner if the disturbed area does not exceed one acre in area, upon notice to the director by the owner of his or her intent to establish the quarry.

CHAPTER 22B. ENVIRONMENTAL BOARDS.

ARTICLE 4. SURFACE MINE BOARD.

§22B-4-1. Appointment and organization of surface mine board.
§22B-4-2. Authority to receive money.

§ 22B-4-1. Appointment and organization of surface mine board.

(a) On and after the effective date of this article, the “reclamation board of review,” heretofore created, shall continue in existence and hereafter shall be known as the “surface mine board.”
(b) The board shall be composed of seven members who shall be appointed by the governor with the advice and consent of the Senate. Not more than four members of the board shall be of the same political party. Each appointed member of the board who is serving in such capacity on the effective date of this article shall continue to serve on the board until his or her term ends or he or she resigns or is otherwise unable to serve. As each member’s term ends, or that member is unable to serve, a qualified successor shall be appointed by the governor with the advice and consent of the Senate. One of the appointees to such board shall be a person who, by reason of previous vocation, employment or affiliations, can be classed as one capable and experienced in coal mining. One of the appointees to such board shall be a person who, by reason of training and experience, can be classed as one capable and experienced in the practice of agriculture. One of the appointees to such board shall be a person who by reason of training and experience, can be classed as one capable and experienced in modern forestry practices. One of the appointees to such board shall be a person who, by reason of training and experience, can be classed as one capable and experienced in engineering. One of the appointees to such board shall be a person who, by reason of training and experience, can be classed as one capable and experienced in water pollution control or water conservation problems. One of the appointees to such board shall be a person with significant experience in the advocacy of environmental protection. One of the appointees to such board shall be a person who represents the general public interest: Provided, That, in any case brought before the board relating to quarry operations as regulated by article four of chapter twenty-two of this code, two alternate board members will serve on the board who have expertise related to the operation of quarries. These two alternate members will serve in place of the board member appointed due to his or her expertise in coal operations and the board member which has been appointed due to his or her expertise in forestry. Each alternative member shall have the
identical term as the member which he or she is replacing. The alternative board member replacing the member with expertise in coal shall be appointed based on his or her expertise in quarry operations. The alternative board member replacing the member with expertise in forestry shall be appointed based on his or her expertise in geology.

(c) During his or her tenure on the board, no member shall receive significant direct or indirect financial compensation from or exercise any control over any person or entity which holds or has held, within the two years next preceding the member’s appointment, a permit to conduct activity regulated by the division, under the provisions of article three or four, chapter twenty-two of this code, or any similar agency of any other state or of the federal government: Provided, That the member classed as experienced in coal mining, the member classed as experienced in engineering, the member classed as experienced in water pollution control or water conservation problems and the two alternative board members serving to hear quarry related cases may receive significant financial compensation from regulated entities for professional services or regular employment so long as the professional or employment relationship is disclosed to the board. No member shall participate in any matter before the board related to a regulated entity from which the member receives or has received, within the preceding two years direct or indirect financial compensation. For purposes of this section, “significant direct or indirect financial compensation” means twenty percent of gross income for a calendar year received by the member, any member of his or her immediate family or the member’s primary employer.

(d) The members of the board shall be appointed for terms of the same duration as their predecessor under the original appointment of two members appointed to serve a term of two years; two members appointed to serve a term of three years; two members to serve a term of four years; and one member to serve a term of five years. Any member whose term expires
may be reappointed by the governor. In the event a board
member is unable to complete the term, the governor shall
appoint a person with similar qualification to complete the
term. The successor of any board member appointed pursuant
to this article must possess the qualification as prescribed
herein. Each vacancy occurring in the office of a member of the
board shall be filled by appointment within sixty days after such
vacancy occurs.

§22B-4-2. Authority to receive money.

In addition to all other powers and duties of the surface
mine board, as prescribed in this chapter or elsewhere by law,
the board shall have and may exercise the power and authority
to receive any money as a result of the resolution of any case on
appeal. Moneys received from cases arising from the Surface
Mine Reclamation Act, as provided in article three of chapter
twenty-two shall be deposited to the credit of the special
reclamation fund created pursuant to section eleven, article
three, chapter twenty-two of this code. Moneys received from
cases arising from the Quarry Reclamation Act, as provided in
article four of chapter twenty-two of this code, shall be depos-
ited to the credit of the quarry reclamation fund created
pursuant to section twenty-two, article four, chapter twenty-two
of this code.

CHAPTER 174

(S. B. 433 — By Senators Anderson, Kessler, Fanning and Ross)

[Passed March 10, 2000; in effect July 1, 2000. Approved by the Governor.]
hundred thirty-one, as amended, relating to emergency medical personnel; requiring emergency medical personnel in coal mines; emergency medical technician-mining certification; and modifying the definitions of emergency medical services personnel.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. EMERGENCY MEDICAL PERSONNEL.

§22A-10-1. Emergency personnel in coal mines.

(a) Emergency medical services personnel must be employed on each shift at every mine that:

1. Employs more than ten employees; and
2. Has more than eight persons present on the shift.

The emergency medical services personnel must be employed at their regular duties at a central location or, when more than one person is required pursuant to the provisions of subsection (b) of this section, at a location which provides for convenient, quick response to emergency. The emergency medical services personnel must have available to them at all times such equipment prescribed by the director of the office of miners' health, safety and training, in consultation with the commissioner of the bureau of public health.

(b) After the first day of July, two thousand, emergency medical services personnel means any person certified by the commissioner of the bureau of public health or authorities recognized and approved by the commissioner, to provide emergency medical services as authorized in article four-c, chapter sixteen of this code and including emergency medical
20 technician-mining. At least one emergency medical services personnel shall be employed at a mine for every fifty employees or any part thereof who are engaged at any time, in the extraction, production or preparation of coal.

24 (c) A training course designed specifically for certification of emergency medical technician-mining, shall be developed at the earliest practicable time by the commissioner of the bureau of public health in consultation with the board of miner training, education and certification. The training course for initial certification as an emergency medical technician-mining shall not be less than sixty hours, which shall include, but is not limited to, basic life support skills and emergency room observation or other equivalent practical exposure to emergencies as prescribed by the commissioner of the bureau of public health.

35 (d) The maintenance of a valid emergency medical technician-mining certificate may be accomplished without taking a three-year recertification examination: Provided, That the emergency medical technician-mining personnel completes an eight-hour annual retraining and testing program prescribed by the commissioner of the bureau of public health in consultation with the board of miner training, education and certification.

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CHAPTER 175

(H. B. 4139 — By Delegates Thompson and Staton)

[Passed March 10, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, four, seven, eight, nine, ten, eleven, twelve, fourteen and seventeen, article seven-
teen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one hundred five, article one, chapter forty-six-a of said code; and to amend and reenact sections one hundred two and one hundred nine, article four of said chapter, all relating to the regulation of residential mortgage lenders and brokers; providing definitional changes; changing reference to secondary mortgage to primary and subordinate mortgages; eliminating the term restrictions on subordinate lien mortgage loans; requiring licenses for primary and subordinate mortgage brokers and lenders; establishing broker and lender licensing requirements, form of licenses, license fees, bonding and net worth requirements; extending present licenses for one year; limiting interest rates on subordinate loans; requiring rebate of unearned finance charges on loan prepayments; restricting charges unless loans made; requiring rebates on refinancing transactions by lenders and their affiliates; defining affiliates; prohibiting loan application fees; providing borrower protection provisions; prohibiting fees not disclosed to borrowers and for products and services not rendered; prohibit intimidation of appraisers; prohibit loans made with the intent of foreclosure; prohibit fees and points in excess of limits; prohibit certain loan practices; allowing compliance with federal disclosures to meet state law disclosure requirements; limiting interest rates on primary and subordinate loans; providing civil remedies for willful violations; providing excuses from inadvertent violations; allowing the commissioner to appoint a hearing examiner in contested cases; and providing similar restrictions and limitations on charges for refinancing transactions by regulated consumer lenders.

Be it enacted by the Legislature of West Virginia:

That sections one, two, four, seven, eight, nine, ten, eleven, twelve, fourteen and seventeen, article seventeen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section one hundred five, article one, chapter forty-six-a of said code be amended and reen-
acted; and that sections one hundred two and one hundred nine, article four of said chapter be amended and reenacted, all to read as follows:

Chapter
46A. West Virginia Consumer Credit and Protection Act.

CHAPTER 31. CORPORATIONS.

ARTICLE 17. MORTGAGE LOANS.

§31-17-1. Definitions and general provisions.
§31-17-2. License required for lender or broker; exemptions.
§31-17-4. Applications for licenses; requirements; bonds; fees; renewals.
§31-17-7. Form of license; posting required; license not transferable or assignable; license may not be franchised; renewal of license.
§31-17-8. Maximum interest rate on subordinate loans; prepayment rebate; maximum points, fees and charges; overriding of federal limitations; limitations on lien documents; prohibitions on primary and subordinate mortgage loans; civil remedy.
§31-17-9. Disclosure; closing statements; other records required.
§31-17-10. Advertising requirements.
§31-17-11. Records and reports; examination of records; analysis.
§31-17-12. Grounds for suspension or revocation of license; suspension and revocation generally; reinstatement or new license.
§31-17-14. Hearing before commissioner: provisions pertaining to hearing.
§31-17-17. Loans made in violation of this article void; agreements to waive article void.

§31-17-1. Definitions and general provisions.

1 As used in this article:

2 (1) "Primary mortgage loan" means a loan made to an individual which is secured in whole or in part by a primary mortgage or deed of trust upon any interest in real property used as a residential dwelling with accommodations for not more than four families.

7 (2) "Subordinate mortgage loan" means a loan made to an individual which is secured in whole or in part by a mortgage or deed of trust upon any interest in real property used as a
residential dwelling with accommodations for not more than four families, which property is subject to the lien of one or more prior recorded mortgages or deeds of trust.

(3) “Person” means an individual, partnership, association, trust, corporation or any other legal entity, or any combination thereof.

(4) “Lender” means any person who makes or offers to make or accepts or offers to accept or purchases any primary or subordinate mortgage loan in the regular course of business. A person shall be deemed to be acting in the regular course of business if he or she makes or accepts, or offers to make or accept, more than five primary or subordinate mortgage loans in any one calendar year.

(5) “Broker” means any person acting in the regular course of business who, for a fee or commission or other consideration, negotiates or arranges, or who offers to negotiate or arrange, a primary or subordinate mortgage loan between a lender and a borrower. A person shall be deemed to be acting in the regular course of business if he or she negotiates or arranges, or offers to negotiate or arrange, more than five primary or subordinate mortgage loans in any one calendar year; or if he or she seeks to charge a borrower or receive from a borrower money or other valuable consideration in any primary or subordinate mortgage transaction before completing performance of all broker services that he or she has agreed to perform for the borrower.

(6) “Brokerage fee” means the fee or commission or other consideration charged by a broker for the services described in subdivision (5) of this section.

(7) “Additional charges” means every type of charge arising out of the making or acceptance of a primary or subordinate mortgage loan, except finance charges, including, but not limited to, official fees and taxes, reasonable closing costs and certain documentary charges and insurance premiums and other
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43 charges which definition is to be read in conjunction with, and
44 permitted by section one hundred nine, article three, chapter
45 forty-six-a of this code.

46 (8) “Finance charge” means the sum of all interest and
47 similar charges payable directly or indirectly by the debtor
48 imposed or collected by the lender incident to the extension of
49 credit, as coextensive with the definition of “loan finance
50 charge” set forth in section one hundred two, article one,
51 chapter forty-six-a of this code.

52 (9) “Commissioner” means the commissioner of banking of
53 this state.

54 (10) “Applicant” means a person who has applied for a
55 lender’s or broker’s license.

56 (11) “Licensee” means any person duly licensed by the
57 commissioner under the provisions of this article as a lender or
58 broker.

59 (12) “Amount financed” means the total of the following
60 items to the extent that payment is deferred:

61 (a) The cash price of the goods, services or interest in land,
62 less the amount of any down payment, whether made in cash or
63 in property traded in;

64 (b) The amount actually paid or to be paid by the seller
65 pursuant to an agreement with the buyer to discharge a security
66 interest in or a lien on property traded in; and

67 (c) If not included in the cash price:

68 (i) Any applicable sales, use, privilege, excise or document-
69 tary stamp taxes;

70 (ii) Amounts actually paid or to be paid by the seller for
71 registration, certificate of title or license fees; and
Exemptions. Licenses.
(d) The placement or sale for securitization of a primary or subordinate mortgage loan into a secondary market by a licensee shall not subject the warehouser or final securitization holder or trustee to the provisions of this article: Provided, That the warehouser, final securitization holder or trustee under such an arrangement is either a licensee, or person or entity entitled to make exempt loans of that type under this section, or the loan is held with right of recourse to a licensee.

§31-17-4. Applications for licenses; requirements; bonds; fees; renewals.

(a) Application for a lender's or broker's license shall each year be submitted in writing under oath, in the form prescribed by the commissioner, and shall contain the full name and address of the applicant and, if the applicant is a partnership, limited liability company or association, of every member thereof, and, if a corporation, of each officer, director and owner of ten percent or more of the capital stock thereof, and such further information as the commissioner may reasonably require. Any application shall also disclose the location at which the business of lender or broker is to be conducted.

(b) At the time of making application for a lender's license, the applicant therefor shall:

(1) If a foreign corporation, submit a certificate from the secretary of state certifying that such applicant is registered with the secretary of state to transact business in this state;

(2) Submit proof that he or she has available for the operation of the business at the location specified in the application net assets of at least two hundred fifty thousand dollars;
(3) File with the commissioner a bond in favor of the state in the amount of one hundred thousand dollars, in such form and with such conditions as the commissioner may prescribe, and executed by a surety company authorized to do business in this state;

(4) Pay to the commissioner a license fee of one thousand two hundred fifty dollars. If the commissioner shall determine that an investigation outside this state is required to ascertain facts or information relative to the applicant or information set forth in the application, the applicant may be required to advance sufficient funds to pay the estimated cost of the investigation. An itemized statement of the actual cost of the investigation outside this state shall be furnished to the applicant by the commissioner, and the applicant shall pay or shall have returned to him or her, as the case may be, the difference between his or her payment in advance of the estimated cost and the actual cost of the investigation; and

(5) Submit proof that the applicant is a business in good standing in its state of incorporation, or if not a corporation, its state of business registration, and a full and complete disclosure of any litigation or unresolved complaint filed by a governmental authority or class action lawsuit on behalf of consumers relating to the operation of the license applicant.

(c) At the time of making application for a broker’s license, the applicant therefor shall:

(1) If a foreign corporation, submit a certificate from the secretary of state certifying that the applicant is registered with the secretary of state to transact business in this state;

(2) Submit proof that he or she has available for the operation of the business at the location specified in the application net worth of at least ten thousand dollars;
(3) File with the commissioner a bond in favor of the state in the amount of twenty-five thousand dollars, in such form and with such conditions as the commissioner may prescribe, and executed by a surety company authorized to do business in this state;

(4) Pay to the commissioner a license fee of one hundred fifty dollars; and

(5) Submit proof that the applicant is a business in good standing in its state of incorporation, or if not a corporation, its state of business registration, and a full and complete disclosure of any litigation or unresolved complaint filed by a governmental authority or class action lawsuit on behalf of consumers relating to the operation of the license applicant.

(d) The aggregate liability of the surety on any bond given pursuant to the provisions of this section shall in no event exceed the amount of such bond.

(e) Nonresident lenders and brokers licensed under this article by their acceptance of such license acknowledge that they are subject to the jurisdiction of the courts of West Virginia and the service of process pursuant to section one hundred thirty-seven, article two, chapter forty-six-a of this code and section thirty-three, article three, chapter fifty-six of this code.

§31-17-7. Form of license; posting required; license not transferable or assignable; license may not be franchised; renewal of license.

(a) It shall be stated on the license whether it is a lender’s or broker’s license, the location at which the business is to be conducted and the full name of the licensee. A broker’s license shall be conspicuously posted in the licensee’s place of business in this state, and a lender’s license shall be conspicuously posted in the licensee’s place of business if in this state. No
license shall be transferable or assignable. No licensee may offer a franchise under that license to another person. The commissioner may allow licensees to have branch offices without requiring additional licenses provided the location of all branch offices are registered with the division of banking by the licensee. Whenever a licensee changes his place of business to a location other than that set forth in his license and branch registration, he shall give written notice thirty days prior to such change to the commissioner.

(b) Every lender’s or broker’s license shall, unless sooner suspended or revoked, expire on December thirty-first of each year, and any such license may be renewed each year in the same manner, for the same license fee or fees specified above and upon the same basis as an original license is issued in accordance with the provisions of section five of this article. All applications for the renewal of licenses shall be filed with the commissioner at least ninety days before the expiration thereof.

(c) The amendments to this article in the year two thousand are effective on and after the first day of July, two thousand. Licenses previously issued and in effect on the first day of July, two thousand, shall be extended for one year and, unless sooner suspended or revoked, shall expire on the thirty-first day of December, two thousand one. Any person, not already licensed, who is operating as a broker or lender on the first day of July, two thousand, and who is registered with the secretary of state to do business in the state, may file an application with the commissioner on or before the first day of August, two thousand. If issued, such licenses shall, unless sooner suspended or revoked, expire on the thirty-first day of December, two thousand one.

§31-17-8. Maximum interest rate on subordinate loans; prepayment rebate; maximum points, fees and charges; overriding of federal limitations; limitations on
lien documents; prohibitions on primary and subordinate mortgage loans; civil remedy.

(a) The maximum rate of finance charges on or in connection with any subordinate mortgage loan shall not exceed eighteen percent per year on the unpaid balance of the amount financed.

(b) A borrower shall have the right to prepay his or her debt in whole or in part at any time and shall receive a rebate for any unearned finance charge, exclusive of any points, investigation fees and loan origination fees, which rebate shall be computed under the actuarial method.

(c) Except as provided by section one hundred nine, article three, chapter forty-six-a of this code, and by subsection (g) of this section, no additional charges may be made, nor may any charge permitted by this section be assessed unless the loan is made.

(d) Where loan origination fees, investigation fees, points, have been charged by the licensee, such charges may not be imposed again by the same or affiliated lender in any refinancing of that loan or any additional loan on that property made within twenty-four months thereof, unless these earlier charges have been rebated by payment or credit to the consumer under the actuarial method, or the total of the earlier and current charges does not exceed the limitation specified in subsection (m)(4) of this section. To the extent this subdivision overrides the preemption on limiting points and other charges on first lien residential mortgage loans contained in the United States Depository Institutions Deregulation and Monetary Control Act of 1980, 12 U.S.C. §1735f-7a, the state law limitations contained in this section shall apply. “Affiliated” means persons under the same ownership or management control. As to corporations, limited liability companies or partnerships, where common owners manage or control a majority of the stock,
membership interests or general partnership interests of one or
more such corporations, limited liability companies or partner-
ships, those persons shall be deemed affiliated. In addition,
persons under the ownership or management control of the
members of an immediate family shall be considered affiliated.
For purposes of this section “immediate family” means mother,
stepmother, father, stepfather, sister, stepsister, brother, step-
brother, spouse, child and grandchildren.

(e) Notwithstanding other provisions of this section, a
delinquent or “late charge” may be charged on any installment
made ten or more days after the regularly scheduled due date in
accordance with section one hundred twelve or one hundred
thirteen, article three, chapter forty-six-a of this code, which-
ever is applicable. The charge may be made only once on any
one installment during the term of the primary or subordinate
mortgage loan.

(f) Hazard insurance may be required by the lender, and
other types of insurance may be offered, as provided in section
one hundred nine, article three, chapter forty-six-a of this code.
The charges for any insurance shall not exceed the standard rate
approved by the insurance commissioner for such insurance.
Proof of all insurance in connection with primary and subordi-
nate mortgage loans subject to this article shall be furnished to
the borrower within thirty days from and after the date of
application therefor by said borrower.

(g) Except for fees for services provided by independent
third parties for appraisals, inspections, title searches and credit
reports, no application fee may be allowed whether or not the
mortgage loan is consummated; however, the borrower may be
required to reimburse the lender for actual expenses incurred by
the lender in a purchase money transaction after acceptance and
approval of a mortgage loan proposal made in accordance with
the provisions of this article which is not consummated because
of:
(1) The borrower's willful failure to close said loan; or

(2) The borrower's false or fraudulent representation of a material fact which prevents closing of said loan as proposed.

(h) No licensee shall make, offer to make, accept or offer to accept, any primary or subordinate mortgage loan except on the terms and conditions authorized in this article.

(i) No licensee shall induce or permit any borrower to become obligated to the licensee under this article, directly or contingently, or both, under more than one subordinate mortgage loan at the same time for the purpose or with the result of obtaining greater charges than would otherwise be permitted under the provisions of this article.

(j) No instrument evidencing or securing a primary or subordinate mortgage loan shall contain:

(1) Any power of attorney to confess judgment;

(2) Any provision whereby the borrower waives any rights accruing to him or her under the provisions of this article;

(3) Any requirement that more than one installment be payable in any one installment period, or that the amount of any installment be greater or less than that of any other installment, except for the final installment which may be in a lesser amount, or unless the loan is structured as a revolving line of credit having no set final payment date;

(4) Any assignment of or order for the payment of any salary, wages, commissions or other compensation for services, or any part thereof, earned or to be earned;

(5) A requirement for compulsory arbitration which does not comply with federal law; or
(6) Blank or blanks to be filled in after the consummation of the loan.

(k) No licensee shall charge a borrower or receive from a borrower money or other valuable consideration as compensation before completing performance of all services the licensee has agreed to perform for the borrower, unless the licensee also registers and complies with all requirements set forth for credit service organizations in article six-c, chapter forty-six-a of this code, including all additional bonding requirements as may be established therein.

(l) No licensee shall make or broker revolving loans secured by a primary or subordinate mortgage lien for the retail purchase of consumer goods and services by use of a lender credit card.

(m) In making any primary or subordinate mortgage loan, no licensee may, and no primary or subordinate mortgage lending transaction may contain terms which:

(1) Collect a fee not disclosed to the borrower; collect any attorney fee at closing in excess of the fee that has been or will be remitted to the attorney; collect a fee for a product or service where the product or service is not actually provided; misrepresent the amount charged by or paid to a third party for a product or service; collect duplicate fee or points to act as both broker and lender for the same mortgage loan, however, fees and points may be divided between the broker and the lender as they agree, but may not exceed the total charges otherwise permitted under this article: Provided, That the fact of any fee, point or compensation is disclosed to the borrower consistent with the solicitation representation made to the borrower;

(2) Compensate, whether directly or indirectly, coerce or intimidate an appraiser for the purpose of influencing the independent judgment of the appraiser with respect to the value of real estate that is to be covered by a deed of trust or is being
offered as security according to an application for a primary or subordinate mortgage loan;

(3) Make or assist in making any primary or subordinate mortgage loan with the intent that the loan will not be repaid and that the lender will obtain title to the property through foreclosure: Provided, That this subdivision shall not apply to reverse mortgages obtained under the provisions of article twenty-four, chapter forty-seven of this code;

(4) Require the borrower to pay, in addition to any periodic interest, combined fees and points of any kind to the lender and broker to arrange, originate, evaluate, maintain or service a loan secured by any encumbrance on residential property that exceed, in the aggregate, five percent of the loan amount financed: Provided, That reasonable closing costs payable to unrelated third parties as permitted under section one hundred nine, article three, chapter forty-six-a of this code shall not be included within this limitation: Provided, however, That yield spread premiums or compensation of two points or less paid by the lender to the broker shall not be included in this limitation: Provided further, That no yield spread premium shall be permitted for any loan for which the annual percentage rate exceeds eighteen percent per year on the unpaid balance of the amount financed. The financing of the fees and points shall be permissible and, where included as part of the finance charge, does not constitute charging interest on interest. To the extent that this section overrides the preemption on limiting points and other charges on first lien residential mortgage loans contained in the United States Depository Institutions Deregulation and Monetary Control Act of 1980, 12 U.S.C. §1735f-7a, the state law limitations contained in this section shall apply;

(5) Secure a primary or subordinate mortgage loan by any security interest in personal property unless the personal property is affixed to the residential dwelling or real estate;
(6) Allow or require a primary or subordinate mortgage loan to be accelerated because of a decrease in the market value of the residential dwelling that is securing the loan;

(7) Require terms of repayment which do not result in continuous monthly reduction of the original principal amount of the loan: Provided, That the provisions of this subdivision shall not apply to reverse mortgage loans obtained under article twenty-four, chapter forty-seven of this code, home equity, open-end lines of credit, bridge loans used in connection with the purchase or construction of another residential dwelling, or commercial loans for multiple residential purchases;

(8) Secure a primary or subordinate mortgage loan in a principal amount, that when added to the aggregate total of the outstanding principal balances of all other primary or subordinate mortgage loans secured by the same property, exceeds the fair market value of the property on the date that the latest mortgage loan is made. For purposes of this paragraph, a broker or lender may rely upon a bona fide written appraisal of the property made by an independent third-party appraiser, or other evidence of fair market value, if the broker or lender does not have actual knowledge that the value is incorrect;

(9) Advise or recommend that the consumer not make timely payments on an existing loan preceding loan closure of a refinancing transaction; or

(10) Knowingly violate any provision of any other applicable state or federal law regulating primary or subordinate mortgage loans, including, without limitation, chapter forty-six-a of this code.

§31-17-9. Disclosure; closing statements; other records required.

(a) Any licensee or person making on his own behalf, or as agent, broker or in other representative capacity on behalf of any other person, a primary or subordinate mortgage loan shall
at the time of the closing furnish to the borrower a complete and
itemized closing statement which shall show in detail:

1. The amount and date of the note or primary and
   subordinate mortgage loan contract and the date of maturity;
2. The nature of the security;
3. The finance charge rate per annum and the itemized
   amount of finance charges and additional charges;
4. The amount financed and total of payments;
5. Disposition of the principal;
6. A description of the payment schedule;
7. The terms on which additional advances, if any, will be
   made;
8. The charge to be imposed for past-due installments;
9. A description and the cost of insurance required by the
   lender or purchased by the borrower in connection with the
   primary or subordinate mortgage loan;
10. The name and address of the borrower and of the
    lender; and
11. That the borrower may prepay the primary or subordi-
    nate mortgage loan in whole or in part on any installment date,
    and that the borrower will receive a rebate in full for any
    unearned finance charge.

Such detailed closing statement shall be signed by the
broker, lender or closing representative, and a completed and
signed copy thereof shall be retained by the broker or lender
and made available at all reasonable times to the borrower, the
borrower’s successor in interest to the residential property, or
the authorized agent of the borrower or the borrower’s succes-
sor, until the time as the indebtedness shall be satisfied in full. Compliance with residential mortgage disclosures required by federal law shall be deemed to meet the requirements of this subsection.

The commissioner may, from time to time, by rules prescribe additional information to be included in a closing statement.

(b) Upon written request from the borrower, the holder of a primary or subordinate mortgage loan instrument shall deliver to the borrower, within ten business days from and after receipt of the written request, a statement of the borrower’s account as required by subsection two, section one hundred fourteen, article two, chapter forty-six-a of this code.

(c) Upon satisfaction of a primary or subordinate mortgage loan obligation in full, the holder of the instrument evidencing or securing the obligation shall comply with the requirements of section one, article twelve, chapter thirty-eight of this code in the prompt release of the lien which had secured the primary or subordinate mortgage loan obligation.

(d) Upon written request or authorization from the borrower, the holder of a primary or subordinate mortgage loan instrument shall send or otherwise provide to the borrower or his or her designee, within three business days after receipt of the written request or authorization, a payoff statement of the borrower’s account. Except as provided by this subsection, no charge may be made for providing the payoff statement. Charges for the actual expenses associated with using a third-party courier delivery or expedited mail delivery service may be assessed when this type of delivery is requested and authorized by the borrower, following disclosure to the borrower of its cost. The payoff information shall be provided by mail, telephone, courier, facsimile, or other transmission as requested by the borrower or his or her designee.
§31-17-10. Advertising requirements.

It shall be unlawful and an unfair trade practice for any person to cause to be placed before the public in this state, directly or indirectly, any false, misleading or deceptive advertising matter pertaining to primary or subordinate mortgage loans or the availability thereof: Provided, That this section shall not apply to the owner, publisher, operator or employees of any publication or radio or television station which disseminates such advertising matter without actual knowledge of the false or misleading character thereof.

§31-17-11. Records and reports; examination of records; analysis.

(a) Every licensee shall maintain at his or her place of business in this state, if any, or if he or she has no place of business in this state at his or her principal place of business outside this state, such books, accounts and records relating to all transactions within this article as are necessary to enable the commissioner to enforce the provisions of this article. All the books, accounts and records shall be preserved, exhibited to the commissioner and kept available as provided herein for the reasonable period of time as the commissioner may by rules require. The commissioner is hereby authorized to prescribe by rules the minimum information to be shown in the books, accounts and records.

(b) Each licensee shall file with the commissioner on or before the fifteenth day of March of each year a report under oath or affirmation concerning his or her business and operations in this state for the preceding license year in the form prescribed by the commissioner.

(c) The commissioner may, at his or her discretion, make or cause to be made an examination of the books, accounts and records of every licensee pertaining to primary and subordinate mortgage loans made in this state under the provisions of this article, for the purpose of determining whether each licensee is
complying with the provisions hereof and for the purpose of verifying each licensee's annual report. If the examination is made outside this state, the licensee shall pay the cost thereof in like manner as applicants are required to pay the cost of investigations outside this state.

(d) The commissioner shall publish annually an aggregate analysis of the information furnished in accordance with the provisions of subsection (b) or (c) of this section, but the individual reports shall not be public records and shall not be open to public inspection.

§31-17-12. Grounds for suspension or revocation of license; suspension and revocation generally; reinstatement or new license.

(a) The commissioner may suspend or revoke any license issued hereunder if he or she finds that the licensee and/or any owner, director, officer, member, partner, stockholder, employee or agent of such licensee:

(1) Has knowingly violated any provision of this article or any order, decision or rule of the commissioner lawfully made pursuant to the authority of this article; or

(2) Has knowingly made any material misstatement in the application for such license; or

(3) Does not have available the net worth required by the provisions of section four of this article; or

(4) Has failed or refused to keep the bond required by section four of this article in full force and effect; or

(5) In the case of a foreign corporation, does not remain qualified to do business in this state; or

(6) Has committed any fraud or engaged in any dishonest activities with respect to any mortgage loan business in this
state, or failed to disclose any of the material particulars of any mortgage loan transaction in this state to anyone entitled to the information; or

(7) Has otherwise demonstrated bad faith, dishonesty or any other quality indicating that the business of the licensee in this state has not been or will not be conducted honestly or fairly within the purpose of this article. It shall be a demonstration of bad faith and an unfair or deceptive act or practice to engage in a pattern of making loans where the consumer has insufficient sources of income to timely repay the debt, and the lender had the primary intent to acquire the property upon default rather than to derive profit from the loan. This section shall not limit any right the consumer may have to bring an action for a violation of section one hundred four, article six, chapter forty-six-a of this code in an individual case.

The commissioner may also suspend or revoke the license of a licensee if he or she finds the existence of any ground upon which the license could have been refused, or any ground which would be cause for refusing a license to such licensee were he then applying for the same. The commissioner may also suspend or revoke the license of a licensee pursuant to his or her authority under section thirteen, article two, chapter thirty-one-a of this code.

(b) The suspension or revocation of the license of any licensee shall not impair or affect the obligation of any preexisting lawful mortgage loan between such licensee and any obligor.

(c) The commissioner may reinstate a suspended license, or issue a new license to a licensee whose license has been revoked, if the grounds upon which any such license was suspended or revoked have been eliminated or corrected and the commissioner is satisfied that the grounds are not likely to recur.
§31-17-14. Hearing before commissioner; provisions pertaining to hearing.

(a) Any applicant or licensee, as the case may be, adversely affected by an order made and entered by the commissioner in accordance with the provisions of section thirteen of this article, if not previously provided the opportunity to a hearing on the matter, may in writing demand a hearing before the commissioner. The commissioner may appoint a hearing examiner to conduct the hearing and prepare a recommended decision. The written demand for a hearing must be filed with the commissioner within thirty days after the date upon which the applicant or licensee was served with a copy of such order. The timely filing of a written demand for hearing shall stay or suspend execution of the order in question, pending a final determination, except for an order suspending a license for failure of the licensee to maintain the bond required by section four of this article in full force and effect. If a written demand is timely filed as aforesaid, the aggrieved party shall be entitled to a hearing as a matter of right.

(b) All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern the hearing and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article were set forth in extenso in this subsection.

(c) For the purpose of conducting any such hearing hereunder, the commissioner or appointed hearing examiner shall have the power and authority to issue subpoenas and subpoenas duces tecum, in accordance with the provisions of section one, article five, chapter twenty-nine-a of this code. All subpoenas and subpoenas duces tecum shall be issued and served in the manner, within the time and for the fees and shall be enforced, as specified in said section, and all of the said section provisions dealing with subpoenas and subpoenas duces tecum shall
apply to subpoenas and subpoenas duces tecum issued for the purpose of a hearing hereunder.

(d) Any such hearing shall be held within twenty days after the date upon which the commissioner received the timely written demand therefor, unless there is a postponement or continuance. The commissioner or hearing examiner may postpone or continue any hearing on his or her own motion, or for good cause shown upon the application of the aggrieved party. At any such hearing, the aggrieved party may represent himself or herself or be represented by any attorney-at-law admitted to practice before any circuit court of this state.

(e) After such hearing and consideration of all of the testimony, evidence and record in the case, the commissioner shall make and enter an order affirming, modifying or vacating his or her earlier order, or shall make and enter such order as is deemed appropriate, meet and proper. Such order shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such order and accompanying findings and conclusions shall be served upon the aggrieved party and his attorney of record, if any, in person or by certified mail, return receipt requested, or in any other manner in which process in a civil action in this state may be served. The order of the commissioner shall be final unless vacated or modified on judicial review thereof in accordance with the provisions of section fifteen of this article.

§31-17-17. Loans made in violation of this article void; agreements to waive article void.

(a) If any primary or subordinate mortgage loan is made in willful violation of the provisions of this article, except as a result of a bona fide error, such loan may be canceled by a court of competent jurisdiction.
(b) Any agreement whereby the borrower waives the
benefits of this article shall be deemed to be against public
policy and void.

(c) Any residential mortgage loan transaction in violation
of this article shall be subject to an action, which may be
brought in a circuit court having jurisdiction, by the borrower
seeking damages, reasonable attorneys' fees and costs.

(d) A licensee who, when acting in good faith in a lending
transaction, inadvertently and without intention, violates any
provision of this article or fails to comply with any provision of
this article, will be excused from such violation if within thirty
days of becoming aware of such violation, or being notified of
such violation, and prior to the institution of any civil action or
criminal proceeding against the licensee, the licensee notifies
the borrower of the violation, makes full restitution of any
overcharges, and makes all other adjustments as are necessary
to make the lending transaction comply with this article.

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

Article
1. Short Title, Definitions and General Provisions.
4. Regulated Consumer Lenders.

ARTICLE 1. SHORT TITLE, DEFINITIONS AND GENERAL PROVISIONS.

§46A-1-105. Exclusions.

(a) This chapter does not apply to:

1 (1) Extensions of credit to government or governmental
agencies or instrumentalities;

2 (2) The sale of insurance by an insurer, except as otherwise
provided in this chapter;
(3) Transactions under public utility or common carrier tariffs if a subdivision or agency of this state or of the United States regulates the charges for the services involved, the charges for delayed payment, and any discount allowed for early payment; or

(4) Licensed pawnbrokers.

(b) Mortgage lender and broker licensees are excluded from the provisions of this chapter to the extent those provisions directly conflict with any section of article seventeen, chapter thirty-one of this code.

ARTICLE 4. REGULATED CONSUMER LENDERS.

§46A-4-102. License to make regulated consumer loans.
§46A-4-109. Restrictions on interest in land as security; assignment of earnings to regulated consumer lender prohibited; when security interest on household furniture goods not valid; prohibitions as to renegotiation of loan discharged in bankruptcy; limiting fees on real property loan refinancings; maximum points, fees and charges; overriding of federal limitations; limitations on lien documents prohibitions on residential mortgage loans; providing civil remedy.

§46A-4-102. License to make regulated consumer loans.

(1) The commissioner shall receive and act on all applications for licenses to make regulated consumer loans under this chapter. Applications shall be under oath, be filed in the manner prescribed by the commissioner, and contain the information the commissioner requires to make an evaluation of the financial responsibility, experience, character and fitness of the applicant, and the findings required of him before he may issue a license. At the time of the filing of the application, the sum of seven hundred fifty dollars shall be paid to the commissioner as an investigation fee.

(2) No license shall be issued to a supervised financial organization other than to one primarily engaged in the business of making consumer loans through offices located within this
state, or to one licensed under the provisions of the West Virginia mortgage loan act as contained in article seventeen, chapter thirty-one of this code, or to any banking institution as defined by the provisions of section two, article one, chapter thirty-one-a of this code. No license will be granted to any office located outside this state: Provided, That the limitation of licensing contained in this subsection shall not prevent any supervised financial organization from making regulated consumer loans when the applicable state or federal statute, law, rule or regulation permits. No license shall be issued to any person unless the commissioner, upon investigation, finds that the financial responsibility, experience, character and fitness of the applicant, and of the members thereof (if the applicant is a copartnership or association) and of the officers and directors thereof (if the applicant is a corporation), are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly and efficiently, within the purposes of this chapter, and the applicant has available for the operation of the business at least ten thousand dollars in capital and has, for each specified location of operation assets of at least two thousand dollars.

(3) Upon written request, the applicant is entitled to a hearing on the question of his qualifications for a license if: (a) The commissioner has notified the applicant in writing that his application has been denied; or (b) the commissioner has not issued a license within sixty days after the application for the license was filed. A request for a hearing may not be made more than fifteen days after the commissioner has mailed a writing to the applicant notifying him that the application has been denied and stating in substance the commissioner’s findings supporting denial of the application.

(4) Not more than one place of business shall be maintained under the same license, but the commissioner may issue more than one license to the same licensee upon compliance with all
the provisions of this article governing an original issuance of
49 a license, for each such new license. Each license shall remain
50 in full force and effect until surrendered, forfeited, suspended
51 or revoked.

52 (5) Upon giving the commissioner at least fifteen days’
prior written notice, a licensee may: (a) Change the location of
53 any place of business located within a municipality to any other
54 location within that same municipality; or (b) change the
55 location of any place of business located outside of a municipali-
56 ty to a location no more than five miles from the originally
57 licensed location, but in no case may a licensee move any place
58 of business located outside a municipality to a location within
59 a municipality. A licensee may not move the location of any
60 place of business located within a municipality to any other
61 location outside of that municipality.

62 (6) A licensee may conduct the business of making regu-
63 lated consumer loans only at or from a place of business for
64 which he holds a license and not under any other name than that
65 stated in the license.

66 (7) A license issued under the provisions of this section
67 shall not be transferable or assignable.

69 (8) A licensee must be incorporated under the laws of this
70 state. The licensee may, however, be a subsidiary of an out-of-
71 state company or financial institution.

§46A-4-109. Restrictions on interest in land as security; assign-
ment of earnings to regulated consumer lender prohibited; when security interest on household
furniture goods not valid; prohibitions as to renegotiation of loan discharged in bankruptcy;
limiting fees on real property loan refinancings; maximum points, fees and charges; overriding of
federal limitations; limitations on lien documents
prohibitions on residential mortgage loans; providing civil remedy.

(1) No consumer loan of two thousand dollars or less may be secured by an interest in land, other than a purchase money loan for that land, unless the lender is licensed in this state as a regulated consumer lender or as a mortgage lender, or is a federally insured depository institution permitted to conduct lending in West Virginia. A security interest taken in violation of this subsection is void.

(2) Notwithstanding the provisions of section one hundred sixteen, article two of this chapter, no regulated consumer lender shall take any assignment of or order for payment of any earnings to secure any loan made by any regulated consumer lender under this article. An assignment or order taken in violation of this subsection is void. This subsection does not prohibit a court from ordering a garnishment to affect recovery of moneys owed by a borrower to a lender as part of a judgment in favor of said lender.

(3) Other than for a purchase money lien, no regulated consumer lender may take a security interest in household goods in the possession and use of the borrower. Where federal law permits a security interest in certain nonpurchase items deemed not to be household goods, the security agreement creating such security interest must be in writing, signed in person by the borrower, and if the borrower is married, signed in person by both husband and wife: Provided, That the signature of both husband and wife shall not be required when they have been living separate and apart for a period of at least five months prior to the making of such security agreement. A security interest taken in violation of this subsection is void.

(4) A regulated consumer lender may not renegotiate the original loan, or any part thereof, or make a new contract covering the original loan, or any part thereof, with any
borrower, who has received a discharge in bankruptcy of the
original loan or any balance due thereon at the time of said
discharge from any court of the United States of America
exercising jurisdiction in insolvency and bankruptcy matters,
unless said regulated consumer lender shall pay to and deliver
to the borrower the full amount of the loan shown on said note,
promise to pay, or security, less any deductions for charges
herein specifically authorized.

(5) In making any loan secured by any encumbrance on
residential property, no lender may, and no such lending
transaction may contain terms which:

(A) Collect a fee not disclosed to the borrower; collect any
attorney fee at closing in excess of the fee that has been or will
be remitted to the attorney; collect a duplicate fee or points to
act as both broker and lender for the same mortgage loan;
collect a fee for a product or service where the product or
service is not actually provided; or, misrepresent the amount
charged by or paid to a third party for a product or service;

(B) Compensate, whether directly or indirectly, coerce or
intimidate an appraiser for the purpose of influencing the
independent judgment of the appraiser with respect to the value
of the real estate that is to be encumbered;

(C) Make or assist in making any loan secured by any
encumbrance on residential property with the intent that the
loan will not be repaid and that the lender will obtain title to the
property through foreclosure: Provided, That this subdivision
shall not apply to reverse mortgages obtained under the
provisions of article twenty-four, chapter forty-seven of this
code;

(D) Allow or require a loan secured by any encumbrance on
residential property to be accelerated because of a decrease in
the market value of the residential dwelling that is securing the
loan;
(E) Require or contain terms of repayment which do not result in continuous monthly reduction of the original principal amount of the loan: Provided, That the provisions of this subdivision shall not apply to reverse mortgage loans obtained under article twenty-four, chapter forty-seven of this code, home equity, open-end lines of credit, bridge loans used in connection with the purchase or construction of another residential dwelling, or commercial loans for multiple residential purchases;

(F) Secure a residential mortgage loan in a principal amount, that when added to the aggregate total of the outstanding principal balances of all other residential mortgage loans secured by the same property, exceeds the fair market value of the property on the date that the latest residential mortgage loan is made. For purposes of this paragraph, a lender may rely upon a bona fide written appraisal of the property made by an independent third-party appraiser, or other evidence of fair market value, if the lender does not have actual knowledge that the value is incorrect; or

(G) (1) Require compulsory arbitration which does not comply with federal law; (2) contain a document with blank or blanks to be filled in after the consummation of the loan; (3) contain a power of attorney to confess judgment; (4) contain any provision whereby the borrower waives any rights accruing to him or her under the provisions of this article; (5) contain any requirement that more than one installment be payable in any one installment period; or (6) contain any assignment of or order for the payment of any salary, wages, commissions or other compensation for services, or any part thereof, earned or to be earned; or

(H) Advise or recommend that the consumer not make timely payments on an existing loan preceding loan closure of a refinancing transaction.
AN ACT to amend and reenact section four, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twenty-five-a, article six of said chapter; and to further amend said chapter by adding thereto a new article, designated article six-d, all relating to tax on motor vehicle rentals; authorizing commissioner of motor vehicles to establish by rule a rate for motor vehicle daily rental tax; authorizing emergency rule; providing for civil penalties; requiring license certificate for businesses engaged in daily passenger car rental; providing for collection of daily passenger car rental tax; requiring filing of certain forms; authorizing denial, suspension or revocation of license for failure to pay tax; establishing liability of officers of corporation; requiring annual returns; requiring applicants to be bonded; establishing fee for licensure; authorizing investigation of applicants; providing for confidentiality of applicant information; establishing criteria for refusal to issue license; requiring licenses to be renewed annually; requiring license to be displayed; authorizing duplicate license; requiring licensee to notify commissioner of certain changes in the business; providing for issuance of new license upon certain changes in business; authorizing investigation of licensees; providing grounds for denial, suspension or revocation of license; relinquishing license; providing for appeals of commissioner’s decision; providing for inspection by commissioner and agents; establishing misdemeanor violations and penalties for violations; providing for injunctive relief; and authorizing promulgation of rules.
Be it enacted by the Legislature of West Virginia:

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

Article 3. Original and Renewal of Registration; Issuance of Certificates of Title.

6D. Daily Passenger Rental Car Business.

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-4. Application for certificate of title; tax for privilege of certification of title; exceptions; fee on payments for leased vehicles; penalty for false swearing.

(a) Certificates of registration of any vehicle or registration plates for the vehicle, whether original issues or duplicates, may not be issued or furnished by the division of motor vehicles or any other officer or agent charged with the duty, unless the applicant therefor already has received, or at the same time makes application for and is granted, an official certificate of title of the vehicle in either an electronic or paper format. The application shall be upon a blank form to be furnished by the division of motor vehicles and shall contain a full description of the vehicle, which description shall contain a manufacturer’s serial or identification number or other number as determined by the commissioner and any distinguishing marks, together with a statement of the applicant’s title and of any liens or encumbrances upon the vehicle, the names and addresses of the holders of the liens and any other information as the division of motor vehicles may require. The application shall be signed and sworn to by the applicant. A duly certified copy of the division’s electronic record of a certificate of title shall be admissi-
(b) A tax is imposed upon the privilege of effecting the certification of title of each vehicle in the amount equal to five percent of the value of the motor vehicle at the time of the certification, to be assessed as follows:

(1) If the vehicle is new, the actual purchase price or consideration to the purchaser of the vehicle is the value of the vehicle. If the vehicle is a used or secondhand vehicle, the present market value at time of transfer or purchase is the value of the vehicle for the purposes of this section: Provided, That so much of the purchase price or consideration as is represented by the exchange of other vehicles on which the tax imposed by this section has been paid by the purchaser shall be deducted from the total actual price or consideration paid for the vehicle, whether the vehicle be new or secondhand. If the vehicle is acquired through gift, or by any manner whatsoever, unless specifically exempted in this section, the present market value of the vehicle at the time of the gift or transfer is the value of the vehicle for the purposes of this section.

(2) No certificate of title for any vehicle may be issued to any applicant unless the applicant has paid to the division of motor vehicles the tax imposed by this section which is five percent of the true and actual value of the vehicle whether the vehicle is acquired through purchase, by gift or by any other manner whatsoever, except gifts between husband and wife or between parents and children: Provided, That the husband or wife, or the parents or children, previously have paid the tax on the vehicles transferred to the state of West Virginia.

(3) The division of motor vehicles may issue a certificate of registration and title to an applicant if the applicant provides sufficient proof to the division of motor vehicles that the applicant has paid the taxes and fees required by this section to
a motor vehicle dealership that has gone out of business or has filed bankruptcy proceedings in the United States bankruptcy court and the taxes and fees so required to be paid by the applicant have not been sent to the division by the motor vehicle dealership or have been impounded due to the bankruptcy proceedings: Provided, That the applicant makes an affidavit of the same and assigns all rights to claims for money the applicant may have against the motor vehicle dealership to the division of motor vehicles.

(4) The division of motor vehicles shall issue a certificate of registration and title to an applicant without payment of the tax imposed by this section if the applicant is a corporation, partnership or limited liability company transferring the vehicle to another corporation, partnership or limited liability company when the entities involved in the transfer are members of the same controlled group and the transferring entity has previously paid the tax on the vehicle transferred. For the purposes of this section, control means ownership, directly or indirectly, of stock or equity interests possessing fifty percent or more of the total combined voting power of all classes of the stock of a corporation or equity interests of a partnership or limited liability company entitled to vote or ownership, directly or indirectly, of stock or equity interests possessing fifty percent or more of the value of the corporation, partnership or limited liability company.

(5) The tax imposed by this section does not apply to vehicles to be registered as Class H vehicles or Class M vehicles, as defined in section one, article ten of this chapter, which are used or to be used in interstate commerce. Nor does the tax imposed by this section apply to the titling of Class B vehicles registered at a gross weight of fifty-five thousand pounds or more, or to the titling of Class C semitrailers, full trailers, pole trailers and converter gear: Provided, That if an owner of a vehicle has previously titled the vehicle at a declared gross weight of fifty-five thousand pounds or more and the title
87 was issued without the payment of the tax imposed by this section, then before the owner may obtain registration for the vehicle at a gross weight less than fifty-five thousand pounds, the owner shall surrender to the commissioner the exempted registration, the exempted certificate of title and pay the tax imposed by this section based upon the current market value of the vehicle: Provided, however, That notwithstanding the provisions of section nine, article fifteen, chapter eleven of this code, the exemption from tax under this section for Class B vehicles in excess of fifty-five thousand pounds and Class C semitrailers, full trailers, pole trailers and converter gear does not subject the sale or purchase of the vehicles to the consumers sales tax.

(6) The tax imposed by this section does not apply to titling of vehicles leased by residents of West Virginia. A tax is imposed upon the monthly payments for the lease of any motor vehicle leased by a resident of West Virginia, which tax is equal to five percent of the amount of the monthly payment, applied to each payment, and continuing for the entire term of the initial lease period. The tax shall be remitted to the division of motor vehicles on a monthly basis by the lessor of the vehicle.

(7) The tax imposed by this section does not apply to titling of vehicles by a registered dealer of this state for resale only, nor does the tax imposed by this section apply to titling of vehicles by this state or any political subdivision thereof, or by any volunteer fire department or duly chartered rescue or ambulance squad organized and incorporated under the laws of the state of West Virginia as a nonprofit corporation for protection of life or property. The total amount of revenue collected by reason of this tax shall be paid into the state road fund and expended by the commissioner of highways for matching federal funds allocated for West Virginia. In addition to the tax, there is a charge of five dollars for each original certificate of title or duplicate certificate of title so issued: Provided, That this state or any political subdivision of this
state, or any volunteer fire department or duly chartered rescue squad is exempt from payment of the charge.

(8) The certificate is good for the life of the vehicle, so long as the vehicle is owned or held by the original holder of the certificate, and need not be renewed annually, or any other time, except as provided in this section.

(9) If, by will or direct inheritance, a person becomes the owner of a motor vehicle and the tax imposed by this section previously has been paid, to the division of motor vehicles, on that vehicle, he or she is not required to pay the tax.

(10) A person who has paid the tax imposed by this section is not required to pay the tax a second time for the same motor vehicle, but is required to pay a charge of five dollars for the certificate of retitle of that motor vehicle, except that the tax shall be paid by the person when the title to the vehicle has been transferred either in this or another state from the person to another person and transferred back to the person.

(11) The tax imposed by this section does not apply to any passenger vehicle offered for rent in the normal course of business by a daily passenger rental car business as licensed under the provisions of article six-d of this chapter. For purposes of this section, a daily passenger car means a Class A motor vehicle having a gross weight of eight thousand pounds or less and is registered in this state or any other state. In lieu of the tax imposed by this section, there is hereby imposed a tax of not less than one dollar nor more than one dollar and fifty cents for each day or part of the rental period. The commissioner shall propose an emergency rule in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish this tax.

(c) Notwithstanding any provisions of this code to the contrary, the owners of trailers, semitrailers, recreational vehicles and other vehicles not subject to the certificate of title
tax prior to the enactment of this chapter are subject to the
privilege tax imposed by this section: Provided, That the
certification of title of any recreational vehicle owned by the
applicant on the thirtieth day of June, one thousand nine
hundred eighty-nine, is not subject to the tax imposed by this
section: Provided, however, That mobile homes, manufactured
homes, modular homes and similar nonmotive propelled
vehicles, except recreational vehicles and house trailers,
susceptible of being moved upon the highways but primarily
designed for habitation and occupancy, rather than for trans-
porting persons or property, or any vehicle operated on a
nonprofit basis and used exclusively for the transportation of
mentally retarded or physically handicapped children when the
application for certificate of registration for the vehicle is
accompanied by an affidavit stating that the vehicle will be
operated on a nonprofit basis and used exclusively for the
transportation of mentally retarded and physically handicapped
children, are not subject to the tax imposed by this section, but
are taxable under the provisions of articles fifteen and fifteen-a,
chapter eleven of this code.

(d) Any person making any affidavit required under any
provision of this section, who knowingly swears falsely, or any
person who counsels, advises, aids or abets another in the
commission of false swearing, or any person, while acting as an
agent of the division of motor vehicles, issues a vehicle
registration without first collecting the fees and taxes or fails to
perform any other duty required by this chapter to be performed
before a vehicle registration is issued is on the first offense
guilty of a misdemeanor and, upon conviction thereof, shall be
fined not more than five hundred dollars or be confined in the
county or regional jail for a period not to exceed six months or,
in the discretion of the court, both fined and confined. For a
second or any subsequent conviction within five years, that
person is guilty of a felony and, upon conviction thereof, shall
be fined not more than five thousand dollars or be imprisoned
in the penitentiary for not less than one year nor more than five
years or, in the discretion of the court, both fined and impris-
oned.

(e) Notwithstanding any other provisions of this section,
any person in the military stationed outside West Virginia, or
his or her dependents who possess a motor vehicle with valid
registration, are exempt from the provisions of this article for
a period of nine months from the date the person returns to this
state or the date his or her dependent returns to this state,
whichever is later.

(f) No person may transfer, purchase or sell a factory-built
home without a certificate of title issued by the commissioner
in accordance with the provisions of this article:

(1) Any person who fails to provide a certificate of title
upon the transfer, purchase or sale of a factory-built home is
guilty of a misdemeanor and, upon conviction thereof, shall for
the first offense be fined not less than one hundred dollars nor
more than one thousand dollars, or be confined in the county or
regional jail for not more than one year or, both fined and
confined. For each subsequent offense, the fine may be in-
creased to not more than two thousand dollars, with confine-
ment in the county or regional jail not more than one year or,
both fined and confined.

(2) Failure of the seller to transfer a certificate of title upon
sale or transfer of the factory-built home gives rise to a cause of
action, upon prosecution thereof, and allows for the recovery of
damages, costs and reasonable attorney fees.

(g) Notwithstanding any other provision to the contrary,
whenever reference is made to the application for or issuance
of any title or the recordation or release of any lien, it shall be
understood to include the application, transmission, recordation,
ARTICLE 6. LICENSING OF DEALERS AND WRECKERS, ETC.

§17A-6-25a. Civil penalties.

(a) In addition to any other remedy or penalty provided by law, the commissioner may levy and collect a civil fine, in an amount not to exceed one thousand dollars for each first violation, against any person who violates the provisions of this article, article six-b, article six-c or article six-d of this chapter, any of the rules or policies implemented to enforce those articles, or any lawful order of the commissioner pursuant to authority set forth in those articles. Every transaction which violates this article, article six-b, article six-c or article six-d of this chapter shall be considered a separate violation. For a second violation, being any violation occurring within three years following any previous violation for which the violator has been disciplined pursuant to section eighteen, article six of this chapter, the commissioner may levy and collect a fine in an amount not to exceed twenty-five hundred dollars and for a third and subsequent violation occurring within the three-year period following the first violation, the commissioner may levy and collect a fine in an amount not to exceed five thousand dollars.

(b) A fine assessed under this section shall not take effect until the commissioner sends to the person against whom the penalty is assessed by certified mail, return receipt requested, a notice of violation finding that the person has committed an offense. The notice shall contain:

(1) A statement of the offense the person committed;

(2) A summary of the facts on which the finding of a violation was made;

(3) The amount of the fine which is being levied; and
(4) An order that the person:

(A) Cease and desist from all future violations and pay the fine; or

(B) Protest in writing the findings of the commissioner or the amount of the assessed fine and request a hearing.

Any request for a hearing must be received by the commissioner within thirty days after the mailing date of the notice of violation. The notice of violation may be sent to any address which the person has used on any title or license application, or other filing or record which the commissioner believes is current. Failure of any person to receive a notice of violation does not preclude the fine from taking effect. However, the commissioner shall accept as timely a request for hearing from any person who, within one year of the date the notice of violation was sent, provides satisfactory proof that he or she did not receive the notice of violation and that good cause exists to excuse his or her failure to receive the notice of violation and that he or she wishes in good faith to assert a protest to the notice of violation. The pendency of the one-year period shall not keep any penalty from taking effect, but the commissioner shall stay enforcement of the fine upon his or her acceptance of any notice filed after the thirty-day period pending the outcome of the appeal.

(c) Upon receipt of a timely request, the commissioner shall afford the person a hearing in accordance with the rules of the division of motor vehicles. The commissioner, in addition to considering the evidence relied upon to prove or defend against a finding of a violation, shall also evaluate the appropriateness of the amount of the civil penalty. In making such evaluation, the commissioner shall consider:

(1) The severity of the violation and its impact on the public;
(2) The number of similar or related violations;

(3) Whether the violations were willful or intentional; and

(4) Any other facts considered appropriate.

(d) In addition to any other findings of fact or conclusions of law, the commissioner may reduce the civil penalty to a stated amount. The appellant may, at any time during the pendency of the appeal, enter into a settlement agreement with the commissioner. The settlement agreement may provide for a reduction in the penalty and may provide that the appellant does not admit a violation. The entry into a settlement agreement or the payment of any fine pursuant to a settlement agreement which states that the appellant does not admit a violation shall not amount to an admission of guilt for purposes of any criminal prosecution.

(e) Upon the expiration of all periods for protest or appeal of a notice of violation, including judicial review pursuant to section four, article five, chapter twenty-nine-a of this code, the notice of violation shall have the same force and effect and be enforceable as a judgment entered by any court of law of this state.

(f) If a corporation is found to have committed a violation against which a penalty may be assessed under this section, any officer of the corporation who is found to have knowingly and intentionally committed the violation, to have knowingly and intentionally directed another to commit the violation or to have knowingly and intentionally failed to take reasonable steps to prevent another from committing the violation, may be individually found to be in violation and assessed a civil penalty as provided by this section.

ARTICLE 6D. DAILY PASSENGER RENTAL CAR BUSINESS.

§17A-6D-1. License certificate required; application.

§ 17A-6D-3. **Liability of officers of corporation, etc.**

§ 17A-6D-4. **Annual return; extension of time.**

§ 17A-6D-5. **Applicant must be bonded.**

§ 17A-6D-6. **Fee required for license certificate.**

§ 17A-6D-7. **Investigation prior to issuance of license certificate; information confidential.**

§ 17A-6D-8. **Refusal of license certificate.**

§ 17A-6D-9. **When application to be made; expiration of license certificate; renewal.**

§ 17A-6D-10. **Form and display of license certificate; certified copies of license.**

§ 17A-6D-11. **Changes in business; action required.**

§ 17A-6D-12. **Investigation; grounds for suspending or revoking a license certificate; notice of refusal, suspension or revocation of license certificate; relinquishing license certificate.**

§ 17A-6D-13. **Inspections; violations and penalties.**

§ 17A-6D-14. **Injunctive relief.**

§ 17A-6D-15. **Promulgation of rules.**

**§ 17A-6D-1. License certificate required; application.**

1. No person may engage in a daily passenger rental car business in West Virginia without a license certificate.

2. Application for a daily passenger rental car license certificate shall be made on a form prescribed by the commissioner and shall disclose any information required by the commissioner. The application shall be verified by an oath or affirmation of the applicant, if an individual, or if the applicant is a corporation, partnership or limited liability company by a partner or officer thereof.

**§ 17A-6D-2. Collection of daily passenger car rental tax imposed.**

1. The tax authorized by section four, article three of this chapter and established by rules promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code shall be collected by each rental car business. The daily passenger car business shall collect the tax on each vehicle rented regardless of where the vehicle is titled or registered and shall remit all taxes collected to the division of
motor vehicles on a monthly basis. All taxes collected pursuant to this section shall be deposited in the state road fund and subject to appropriation by the Legislature. The daily passenger car business shall complete the returns required by the commissioner of motor vehicles and submit them monthly with the remittance. In addition, an annual return which summarizes the monthly returns is required. The monthly returns are due no later than the fifteenth day following the last day of the month for which the return applies, and the annual return shall be due no later than the thirtieth day following the close of the year to which it applies. The commissioner of motor vehicles shall promulgate an emergency rule pursuant to the provisions of chapter twenty-nine-a of this code setting forth pertinent information regarding the collection of the tax imposed under this section, the definition of a daily passenger car rental business, and specifying forms. Nonpayment of the tax shall constitute grounds for the commissioner of motor vehicles to deny, suspend or revoke the license certificate set forth in this article. The emergency rule shall be filed on or before the first day of June, two thousand.

§17A-6D-3. Liability of officers of corporation, etc.

If the taxpayer is an association, partnership or corporation, the officers thereof shall be personally liable, jointly and severally, for any default on the part of the association, partnership or corporation, and payment of the tax and any additions to the tax, penalties and interest on the tax imposed by this article may be enforced against the officers as against the association, partnership or corporation which they represent. Any failure to collect the tax imposed in this article and/or any failure to timely remit to the commissioner of motor vehicles the tax imposed by this article constitutes a default for purposes of this section. Any other failure to comply with the provisions of this article constitutes a default for purposes of this section.

§17A-6D-4. Annual return; extension of time.
(a) **Date due.** — On or before thirty days after the end of the tax year, each person liable for the payment of any tax due under this article shall make and file an annual return in such form as may be required by the commissioner of motor vehicles, showing:

1. Total gross proceeds of his or her daily passenger car rental business for preceding tax year;
2. Gross proceeds upon which the tax for that year was computed; and
3. Any other information necessary in the computation or collection of the tax that the commissioner of motor vehicles may require.

(b) **Payment.** — After deducting the amount of prior payments during the tax year, the taxpayer shall forward the annual return along with payment of any remaining tax, due for the preceding tax year, to the commissioner of motor vehicles. The taxpayer or his duly authorized agent shall verify the return under oath.

(c) **Extension of time.** — The commissioner of motor vehicles for good cause shown, may, on written application of a taxpayer, extend the time for making any return required by the provisions of this article.

§17A-6D-5. **Applicant must be bonded.**

An application for a license certificate must be accompanied by a bond in the penal sum of twenty-five thousand dollars and have a corporate surety authorized to do business in this state, to ensure that the applicant will not, in the conduct of his or her business, make any fraudulent representation which causes a financial loss to any purchaser, seller, financial institution, agency or the state of West Virginia. The bond shall be effective on the date the license certificate is issued.
A licensee shall keep the bond in full force and effect at all times. The surety on the bond may cancel the bond upon giving thirty days' notice to the commissioner and, after notice of cancellation, the surety is relieved of liability for any breach or condition occurring after the effective date of the cancellation.

§17A-6D-6. Fee required for license certificate.

The initial application fee for a certificate to engage in a daily passenger rental car business is two hundred and fifty dollars. The annual renewal fee for the certificate is one hundred dollars.

§17A-6D-7. Investigation prior to issuance of license certificate; information confidential.

Upon receipt of a completed application, the required bond and the application fee, the commissioner may conduct an investigation if necessary to determine the accuracy of any statements contained in the application and the existence of any other facts relevant in considering the application. To facilitate the investigation, the commissioner may withhold issuance or refusal of the license certificate for a period not to exceed thirty days.

Any application for a license certificate under the provisions of this article and any information submitted regarding the application shall be confidential for use of the division. No person may divulge any information contained in any application or any information submitted regarding the application, except in response to a valid subpoena or subpoena duces tecum issued pursuant to law.

§17A-6D-8. Refusal of license certificate.

If the commissioner finds that the applicant:

1. (1) Has failed to furnish the required bond;
(2) Has knowingly made a false statement of a material fact in the application;

(3) Has habitually defaulted on financial obligations;

(4) Has been convicted of a felony within five years immediately preceding receipt of the application by the commissioner;

(5) Has not complied with the registration and title laws of this state;

(6) Has been guilty of any fraudulent act in connection with the business of a daily passenger rental car business;

(7) Has done any act or has failed or refused to perform any duty for which the license certificate sought could be suspended or revoked were it then issued and outstanding;

(8) Has not attained the age of eighteen years;

(9) Has been delinquent in the payment of any taxes owed to a political subdivision of or to the state of West Virginia;

(10) Has been denied a license in another state or has been the subject of license revocation or suspension in another state;

(11) Has committed any action in another state which, if it had been committed in this state, would be grounds for denial and refusal of the application for a license certificate.

Then, upon the basis of the application, such finding and all other information, the commissioner shall make and enter an order denying the application for a license certificate. The denial is final and conclusive subject to appeal. If there is no basis to deny the application, the commissioner shall issue to the applicant the license certificate which shall entitle the licensee to engage in a daily passenger rental car business.
§17A-6D-9. When application to be made; expiration of license certificate; renewal.

1 (a) The initial application for a license certificate to engage in a daily passenger rental car business shall be made at least thirty days prior to the first day of January, two thousand one. This license shall be valid for one year.

(b) Any initial application made after the first day of January, two thousand one, and any year thereafter, shall expire on the thirty-first day of December of that year.

(c) A license certificate may be renewed by paying the renewal fee and review by the commissioner. Any application for renewal must be received by the commissioner at least thirty days prior to its expiration.

(d) A license certificate issued in accordance with the provisions of this article shall not be transferable.

§17A-6D-10. Form and display of license certificate; certified copies of license.

1 (a) The commissioner shall prescribe the form of the license certificate for a daily passenger rental car business. Each license certificate shall have printed on the certificate the seal of the division, the location of each place of business of the licensee, the year for which the license is issued, the license certificate number and any other information the commissioner may prescribe. The license certificate shall be delivered or mailed to the licensee.

(b) When a licensee conducts his or her licensed business at more than one location, he or she shall apply to the commissioner for a certified copy of the license certificate for each place of business. A fee of one dollar shall be paid for each certified copy of the license certificate. The license certificate is to be conspicuously posted at each place of business.
(c) In the event of the loss or destruction of a license certificate or a certified copy of the license certificate, the licensee shall immediately make application for a certified copy of the license certificate. A fee of one dollar shall be required for a certified copy.

§17A-6D-11. Changes in business; action required.

Every daily passenger rental car business shall notify the commissioner within sixty days from the date on which any of the following changes in the business occur:

1. A change of the location of any place of business;
2. A change of the name or trade name under which the licensee engages or will engage in the business;
3. The death of the licensee or any partner or partners of the licensee;
4. A change in any partners, officers or directors;
5. A change in ownership of the business;
6. A change in the type of legal entity by and through which the licensee engages or will engage in the business; or
7. The appointment of any trustee in bankruptcy, trustee under an assignment for the benefit of creditors, master or receiver.

When any change specified in subdivision (1), (2), (3), (4), (5) or (6) occurs, an application for a new license certificate shall immediately be filed with the commissioner: Provided, that when a change is made involving subdivision (3) of this section, an application for a new license certificate need not be filed during the balance of the license year if a member of the family of the deceased person succeeds to the interest in the business. Upon receipt and review of the application, a new
license certificate shall be issued incorporating the changes. No additional fee for the balance of the license year is required for the issuance of any new license certificate issued as a result of any change specified in this section.

No new license certificate is required for any trustee in bankruptcy, trustee under an assignment for the benefit of creditors, receiver or master, appointed pursuant to law, who shall take charge of or operate such business for the purpose of winding up the affairs of the business or protecting the interests of the creditors of the business.

§17A-6D-12. Investigation; grounds for suspending or revoking a license certificate; notice of refusal, suspension or revocation of license certificate; relinquishing license certificate.

The commissioner may conduct an investigation to determine whether any provisions of this chapter have been violated by a licensee. Any investigation shall be kept in strictest confidence by the commissioner, the division, the licensee, any complainant and all other persons, unless and until the commissioner suspends or revokes the license certificate of the license involved.

(a) The commissioner may suspend or revoke a license certificate if the commissioner finds that the licensee:

(1) Has failed or refused to comply with the laws of this state relating to the registration and titling of vehicles and the giving of notices of transfers;

(2) Has failed or refused to comply with the provisions and requirements of this article and the promulgated rules authorized in section nine, article two of this chapter which were implemented by the commissioner, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to enforce the provisions of this article; or
(b) The commissioner shall suspend or revoke a license certificate if the commissioner finds that the licensee:

(1) Has knowingly made a false statement of a material fact in his or her application for the license certificate then issued and outstanding;

(2) Has habitually defaulted on financial obligations;

(3) Has been guilty of any fraudulent act in connection with the license service business;

(4) Has defrauded or is attempting to defraud the state or any political subdivision of the state of any taxes or fees in connection with the sale or transfer of any vehicle;

(5) Has committed fraud in the registration of a vehicle;

(6) Has knowingly purchased, sold or otherwise dealt in a stolen vehicle or vehicles;

(7) Has advertised by any means, with intent to defraud, any material representation or statement of fact which is untrue, misleading or deceptive in any particular, relating to the conduct of the licensed business;

(8) Has a license certificate to which he is not lawfully entitled; or

(9) The existence of any other ground upon which the license certificate could have been refused, or any ground upon which would be cause for refusing a license certificate to the licensee were he then applying for the same.

(c) Whenever a licensee fails or refuses to keep the bond required by section two of this article in full force and effect, the license certificate of the licensee shall automatically be suspended unless and until the required bond is furnished to the commissioner, in which event the suspension shall be vacated.
§176-48. License certificate.

(d) Whenever the commissioner refuses to issue a license certificate, or revokes a license certificate, he or she shall make and enter an order to that effect and shall cause a copy of the order to be served in person or by certified mail, return receipt requested, on the applicant or licensee.

(e) Suspensions under this section shall continue until the cause of the suspension has been eliminated or corrected. Whenever a license certificate is suspended or revoked, the commissioner shall, in the order of suspension or revocation, direct the licensee to return to the division his or her license certificate and any other documents specified. It is the duty of the licensee to comply with the order. Whenever a licensee fails or refuses to comply with any order of the commissioner, the commissioner shall proceed as provided in section seven, article nine of this chapter.

(f) Any applicant whose request for a license certificate is refused and any licensee whose license is suspended or revoked may appeal that action in accordance with procedures established by the commissioner. The revocation or suspension of a license certificate does not preclude a person from submitting an application for a new license certificate, to be processed in the same manner. The license certificate shall be issued or refused on the same grounds as any other application for a license certificate, except that any previous suspension and revocation may be considered in deciding whether to issue or refuse the license certificate.

§17A-6D-13. Inspections; violations and penalties.

(a) The commissioner and his agents, acting at the commissioner's request, are hereby authorized to inspect the place of business and pertinent records, documents and papers of any person required to be licensed under the provisions of this article to the extent deemed reasonably necessary to determine compliance with and violations of this article. For the purpose
of making an inspection, the commissioner and his agents are authorized, at reasonable times, to enter in and upon the place of business suspected of being in violation of this article.

(b) Any person who violates any provision of this article or any final order of the commissioner or board issued pursuant to this article, shall be guilty of a misdemeanor and the provisions of article eleven of this chapter governing violations of this chapter shall be fully applicable to the violation.


(a) Whenever it appears to the commissioner that any person or licensee has violated any provision of this article or any final order of the commissioner, the commissioner may petition, in the name of the state, the circuit court of the county in which the violation or violations occurred, for an injunction against the person or licensee. A violation or violations resulting in prosecution or conviction under the provisions of article eleven of this chapter shall not prohibit injunctive relief.

The circuit court may, by mandatory or prohibitory injunction, compel compliance with the provisions of this article and all final orders of the commissioner. The court may also issue temporary injunctions.

(b) The judgment by the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals. Any such appeal shall be sought in the manner and within the time provided by law for appeals from circuit courts in other civil cases.


The commissioner may promulgate rules in accordance with article three, chapter twenty-nine-a of this code in order to effect the provisions of this article.
AN ACT to amend and reenact sections fourteen and twenty-three, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to registration plates generally; types of plates; issuance of special registration plates for certain state officials; Class G motorcycle plates; limitations; issuance of license plates for use on state vehicles; and authorizing the commissioner of motor vehicles to issue an unlimited number of Class A license plates to the commission on special investigations for state-owned vehicles used for official undercover work.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-14. Registration plates generally; description of plates; issuance of special numbers and plates; registration fees; special application fees; exemptions; commissioner to promulgate forms; suspension and nonrenewal.

§17A-3-23. Registration plates to state, county, municipal and other governmental vehicles; use for undercover activities.

*§17A-3-14. Registration plates generally; description of plates; issuance of special numbers and plates; registration fees; special application fees; exemptions; commissioner to promulgate forms; suspension and nonrenewal.

*Clerk's Note: This section was also amended by H. B. 4309 (Chapter 178), which passed subsequent to this act.
tion fees; special application fees; exemptions; commissioner to promulgate forms; suspension and nonrenewal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) A surviving spouse may continue to use his or her deceased spouse's national guard forces license plate until the surviving spouse dies, remarryes or does not renew the license plate.

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

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

(B) The commissioner shall propose rules for legislative approval in accordance with the provisions of chapter twenty-nine-a of this code regarding the orderly distribution of the plates: Provided, That for purposes of this subdivision, the registration plates requested and issued shall include all plates bearing the numbers two through two thousand.

(C) An annual fee of fifteen dollars shall be charged for each special registration plate issued pursuant to this subdivision, which is in addition to all other fees required by this chapter.
(5) Honorably discharged veterans may be issued special registration plates as follows:

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

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

(C) A surviving spouse may continue to use his or her deceased spouse’s honorably discharged veterans license plate until the surviving spouse dies, remarries or does not renew the license plate.

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

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

(B) A surviving spouse may continue to use his or her deceased spouse’s disabled veterans license plate until the
surviving spouse dies, remarries or does not renew the license plate.

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

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

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

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

(C) A surviving spouse may continue to use his or her deceased spouse’s purple heart medal license plate until the surviving spouse dies, remarries or does not renew the license plate.

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

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

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

(C) A surviving spouse may continue to use his or her deceased spouse's survivors of the attack on Pearl Harbor license plate until the surviving spouse dies, remarries or does not renew the license plate.

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

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

(A) Nonprofit charitable and educational organizations authorized under the program established under the prior enactment of this subdivision may continue to market the special registration plate previously approved to organization members and the general public. However, after the effective date of the reenactment of this section, the commissioner shall not approve or authorize any additional nonprofit charitable and
(B) Approved nonprofit charitable and educational organizations authorized under the prior enactment of this subdivision may accept and collect applications for special registration plates from owners of Class A motor vehicles together with a special annual fee of fifteen dollars, which is in addition to all other fees required by this chapter. The applications and fees shall be submitted to the division of motor vehicles with the request that the division issue a registration plate bearing a combination of letters or numbers with the organizations’ logo or emblem, with the maximum number of letters or numbers to be determined by the commissioner.

(C) The commissioner shall propose rules for legislative approval in accordance with the provisions of chapter twenty-nine-a of this code regarding the procedures for and approval of special registration plates issued pursuant to this subdivision.

(D) The commissioner shall set an appropriate fee to defray the administrative costs associated with designing and manufacturing special registration plates for a nonprofit charitable or educational organization. The nonprofit charitable or educational organization shall collect this fee and forward it to the division for deposit in a special revolving fund to pay the administrative costs. The nonprofit charitable or educational organization may also collect a fee for marketing the special registration plates.

(10) Specified emergency or volunteer registration plates may be issued as follows:

(A) Any owner of a motor vehicle who is a resident of the state of West Virginia and who is a certified paramedic or emergency medical technician, a member of a volunteer fire
company or a paid fire department, a member of the state fire
commission, the state fire marshal, the state fire marshal’s
assistants, the state fire administrator and voluntary rescue
squad members may apply for a special license plate for any
number of Class A vehicles titled in the name of the qualified
applicant which bears the insignia of the profession, group or
commission. Any insignia shall be designed by the commis-
sioner. License plates issued pursuant to this subdivision shall
bear the requested insignia in addition to the registration
number issued to the applicant pursuant to the provisions of this
article.

(B) Each application submitted pursuant to this subdivision
shall be accompanied by an affidavit signed by the fire chief or
department head of the applicant stating that the applicant is
justified in having a registration with the requested insignia;
proof of compliance with all laws of this state regarding
registration and licensure of motor vehicles; and payment of all
required fees.

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

(11) Special scenic registration plates:

(A) Upon appropriate application, the commissioner shall
issue a special registration plate displaying a scenic design of
West Virginia no later than the first day of January, one
thousand nine hundred ninety-six. This special plate shall
display the words “Wild Wonderful” as a slogan.
(B) A special one-time initial application fee of ten dollars shall be charged in addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited into a special revolving fund to be used in the administration of this chapter.

(12) Honorably discharged marine corps league members may be issued special registration plates as follows:

(A) Upon appropriate application, there shall be issued to any honorably discharged marine corps league member a special registration plate for any number of vehicles titled in the name of the qualified applicant with an insignia designed by the commissioner of the division of motor vehicles.

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

(C) A surviving spouse may continue to use his or her deceased spouse's honorably discharged marine corps league license plate until the surviving spouse dies, remarries or does not renew the license plate.

(13) Military organization registration plates:

(A) The division may issue a special registration plate for the members of any military organization chartered by the United States Congress upon receipt of a guarantee from such organization of a minimum of one hundred applicants. The insignia on the plate shall be designed by the commissioner.
(B) Upon appropriate application, members of the chartered organization in good standing, as determined by the governing body of the chartered organization, may be issued a special registration plate for any number of vehicles titled in the name of the qualified applicant.

(C) A special one-time initial application fee of ten dollars shall be charged for each special license plate in addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited into a special revolving fund to be used in the administration of this chapter. Provided, That nothing in this section may be construed to exempt any veteran from any other provision of this chapter.

(D) A surviving spouse may continue to use his or her deceased spouse's military organization registration plate until the surviving spouse dies, remarries or does not renew the special military organization registration plate.

(14) Special nongame wildlife registration plates:

(A) Upon appropriate application, the division shall issue a special registration plate displaying a species of West Virginia nongame wildlife no later than the first day of January, one thousand nine hundred ninety-eight. This special plate shall display a species of nongame wildlife native to West Virginia as prescribed and designated by the commissioner and the director of the division of natural resources.

(B) An annual fee of fifteen dollars shall be charged for each special nongame wildlife registration plate in addition to all other fees required by this chapter. All annual fees collected for nongame wildlife registration plates shall be deposited in a special revenue account designated the nongame wildlife fund and credited to the division of natural resources.

(C) A special one-time initial application fee of ten dollars shall be charged in addition to all other fees required by this
chapter. All initial application fees collected by the division shall be deposited in a special revolving fund to be used in the administration of this chapter.

(15) Members of the silver haired legislature may be issued special registration plates as follows:

(A) Upon appropriate application, there shall be issued to any person who is a duly qualified member of the silver haired legislature a specialized registration plate which bears recognition of the applicant as a member of the silver haired legislature.

(B) A qualified member of the silver haired legislature may obtain one registration plate described in this subdivision for use on a passenger vehicle titled in the name of the qualified applicant. An annual fee of fifteen dollars, in addition to all other fees required by this chapter, shall be charged for the plate. All annual fees collected by the division shall be deposited in a special revolving fund to be used in the administration of this chapter.

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

(e)(1) Nothing in this section may be construed to require a charge for a free prisoner of war license plate or a free recipient of the congressional medal of honor license plate for a vehicle titled in the name of the qualified applicant as authorized by other provisions of this code.

(2) A surviving spouse may continue to use his or her deceased spouse’s prisoner of war or congressional medal of honor license plate until the surviving spouse dies, remarries or does not renew the license plate.
(3) Qualified former prisoners of war and recipients of the congressional medal of honor may obtain a second special registration plate for use on a passenger vehicle titled in the name of the qualified applicant. An annual fee of fifteen dollars, in addition to all other fees required by this chapter, shall be charged for the second special plate.

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

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

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

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

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

§17A-3-23. Registration plates to state, county, municipal and other governmental vehicles; use for undercover activities.

Any motor vehicle designed to carry passengers, owned or leased by the state of West Virginia, or any of its departments, bureaus, commissions or institutions, except vehicles used by the governor, treasurer, three plates per elected office of the board of public works, vehicles operated by the state police, vehicles operated by conservation officers of the division of natural resources, not to exceed ten vehicles operated by the arson investigators of the office of state fire marshal and not to exceed sixteen vehicles operated by inspectors of the office of the alcohol beverage control commissioner, may not be operated or driven by any person unless it has displayed and attached to the front thereof, in the same manner as regular motor vehicle registration plates are attached, a plate of the same size as the regular registration plate, with white lettering on a green background bearing the words "West Virginia" in one line and the words "State Car" in another line, and the lettering for the words "State Car" shall be of sufficient size to
be plainly readable from a distance of one hundred feet during daylight.

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

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

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

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

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

The commissioner may issue a maximum of ten Class A license plates to the division of natural resources for use by conservation officers. The commissioner shall designate the color and design of the registration plates to be displayed on the front and the rear of all other state-owned vehicles owned by the division of natural resources and operated by conservation officers.

The commissioner is authorized to issue an unlimited number of Class A license plates to the commission on special investigations for state-owned vehicles used for official undercover work conducted by the commission on special investigations.

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

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

It is the duty of each office, department, bureau, commission or institution furnished any vehicle to have plates as described herein affixed thereto prior to the operation of the vehicle by any official or employee.

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

Magistrates shall have concurrent jurisdiction with circuit and criminal courts for the enforcement of this section.
AN ACT to amend and reenact section fourteen, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section three-a, article ten of said chapter; and to amend and reenact section six, article thirteen, chapter seventeen-c, all relating to motor vehicle and motorcycle registration by authorizing specialized motor vehicle registration plates for classic motor vehicles and motorcycles and by authorizing specialized motorcycle registration plates for United States armed forces veterans and by authorizing special license plates depicting racing themes and by authorizing special license plates for military medal winners and by authorizing special license plates displaying a species of wildlife native to West Virginia and by authorizing specialized motorcycle registration plates and removable windshield placards for the mobility impaired.

Be it enacted by the Legislature of West Virginia:

That section fourteen, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section three-a, article ten of said chapter be amended and reenacted; and that section six, article thirteen, chapter seventeen-c of said code be amended and reenacted, all to read as follows:

Chapter
17A. Motor Vehicle Administration, Registration, Certificate of Title, and Antitheft Provisions.
17C. Traffic Regulations and Laws of the Road.
CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE, AND ANTITHEFT PROVISIONS.

Article 3. Original and Renewal of Registration; Issuance of Certificates of Title.

10. Fees for Registration, Licensing, Etc.

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

*§17A-3-14. Registration plates generally; description of plates; issuance of special numbers and plates; registration fees; special application fees; exemptions; commissioner to promulgate forms; suspension and nonrenewal.

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

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

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

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

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

*Clerk's Note: This section was also amended by H. B. 4806 (Chapter 177), which passed prior to this act.
(c) The division may not issue, permit to be issued or distribute any special registration plates except as follows:

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

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

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

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

(C) The division shall charge an annual fee of fifteen dollars for every registration plate issued pursuant to this subdivision, which is in addition to all other fees required by this chapter.
(3) The division may issue members of the national guard forces special registration plates as follows:

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

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

(C) A surviving spouse may continue to use his or her deceased spouse’s national guard forces license plate until the surviving spouse dies, remarries or does not renew the license plate.

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

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

(B) The commissioner shall propose rules for legislative approval in accordance with the provisions of chapter twenty-nine-a of this code regarding the orderly distribution of the plates: Provided, That for purposes of this subdivision, the registration plates requested and issued shall include all plates bearing the numbers two through two thousand.

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

(5) The division may issue honorably discharged veterans special registration plates as follows:

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

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

(C) A surviving spouse may continue to use his or her deceased spouse's honorably discharged veterans license plate until the surviving spouse dies, remarries or does not renew the license plate.
(6) The division may issue disabled veterans special registration plates as follows:

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

(B) A surviving spouse may continue to use his or her deceased spouse’s disabled veterans license plate until the surviving spouse dies, remarries or does not renew the license plate.

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

(7) The division may issue recipients of the distinguished purple heart medal special registration plates as follows:

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

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

(C) A surviving spouse may continue to use his or her deceased spouse’s purple heart medal license plate until the
surviving spouse dies, remarries or does not renew the license plate.

(D) A recipient of the purple heart medal may obtain a second purple heart medal license plate as described in this section for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge an annual fee of fifteen dollars, in addition to all other fees required by this chapter, for the second plate.

(8) The division may issue survivors of the attack on Pearl Harbor special registration plates as follows:

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

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

(C) A surviving spouse may continue to use his or her deceased spouse’s survivors of the attack on Pearl Harbor license plate until the surviving spouse dies, remarries or does not renew the license plate.

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

(9) The division may issue special registration plates to nonprofit charitable and educational organizations as follows:
(A) Approved nonprofit charitable and educational organizations may accept and collect applications for special registration plates from owners of Class A motor vehicles together with a special annual fee of fifteen dollars, which is in addition to all other fees required by this chapter. The applications and fees shall be submitted to the division of motor vehicles with the request that the division issue a registration plate bearing a combination of letters or numbers with the organizations’ logo or emblem, with the maximum number of letters or numbers to be determined by the commissioner.

(B) The commissioner shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code regarding the procedures for and approval of special registration plates issued pursuant to this subdivision.

(C) The commissioner shall set an appropriate fee to defray the administrative costs associated with designing and manufacturing special registration plates for a nonprofit charitable or educational organization. The nonprofit charitable or educational organization shall collect this fee and forward it to the division for deposit in a special revolving fund to pay the administrative costs. The nonprofit charitable or educational organization may also collect a fee for marketing the special registration plates.

(10) The division may issue specified emergency or volunteer registration plates as follows:

(A) Any owner of a motor vehicle who is a resident of the state of West Virginia and who is a certified paramedic or emergency medical technician, a member of a volunteer fire company or a paid fire department, a member of the state fire commission, the state fire marshal, the state fire marshal’s assistants, the state fire administrator and voluntary rescue squad members may apply for a special license plate for any number of Class A vehicles titled in the name of the qualified applicant which bears the insignia of the profession, group or commission. Any insignia shall be designed by the commis-
License plates issued pursuant to this subdivision shall bear the requested insignia in addition to the registration number issued to the applicant pursuant to the provisions of this article.

(B) Each application submitted pursuant to this subdivision shall be accompanied by an affidavit signed by the fire chief or department head of the applicant stating that the applicant is justified in having a registration with the requested insignia; proof of compliance with all laws of this state regarding registration and licensure of motor vehicles; and payment of all required fees.

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

(11) The division may issue special scenic registration plates as follows:

(A) Upon appropriate application, the commissioner shall issue a special registration plate displaying a scenic design of West Virginia which displays the words “Wild Wonderful” as a slogan.

(B) The division shall charge a special one-time initial application fee of ten dollars in addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited into a special revolving fund to be used in the administration of this chapter.

(12) The division may issue honorably discharged marine corps league members special registration plates as follows:
(A) Upon appropriate application, the division shall issue to any honorably discharged marine corps league member a special registration plate for any number of vehicles titled in the name of the qualified applicant with an insignia designed by the commissioner of the division of motor vehicles.

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

(C) A surviving spouse may continue to use his or her deceased spouse's honorably discharged marine corps league license plate until the surviving spouse dies, remarries or does not renew the license plate.

(13) The division may issue military organization registration plates as follows:

(A) The division may issue a special registration plate for the members of any military organization chartered by the United States Congress upon receipt of a guarantee from organization of a minimum of one hundred applicants. The insignia on the plate shall be designed by the commissioner.

(B) Upon appropriate application, the division may issue members of the chartered organization in good standing, as determined by the governing body of the chartered organization, a special registration plate for any number of vehicles titled in the name of the qualified applicant.

(C) The division shall charge a special one-time initial application fee of ten dollars for each special license plate in addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited into a special revolving fund to be used in the administration of this
chapter: Provided, That nothing in this section may be construed to exempt any veteran from any other provision of this chapter.

(D) A surviving spouse may continue to use his or her deceased spouse's military organization registration plate until the surviving spouse dies, remarries or does not renew the special military organization registration plate.

(14) The division may issue special nongame wildlife registration plates and special wildlife registration plates as follows:

(A) Upon appropriate application, the division shall issue a special registration plate displaying a species of West Virginia wildlife which shall display a species of wildlife native to West Virginia as prescribed and designated by the commissioner and the director of the division of natural resources.

(B) The division shall charge an annual fee of fifteen dollars for each special nongame wildlife registration plate in addition to all other fees required by this chapter. All annual fees collected for nongame wildlife registration plates shall be deposited in a special revenue account designated the nongame wildlife fund and credited to the division of natural resources.

(C) The division shall charge a special one-time initial application fee of ten dollars in addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited in a special revolving fund to be used in the administration of this chapter.

(15) The division may issue members of the silver haired legislature special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any person who is a duly qualified member of the silver haired legislature a specialized registration plate which bears recognition of the applicant as a member of the silver haired legislature.
(B) A qualified member of the silver haired legislature may obtain one registration plate described in this subdivision for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge an annual fee of fifteen dollars, in addition to all other fees required by this chapter, for the plate. All annual fees collected by the division shall be deposited in a special revolving fund to be used in the administration of this chapter.

(16) Upon appropriate application, the commissioner shall issue to a classic motor vehicle or classic motorcycle as defined in section three-a, article ten of this chapter, a special registration plate designed by the commissioner. An annual fee of fifteen dollars, in addition to all other fees required by this chapter, shall be charged for each classic registration plate.

(17) Honorably discharged veterans may be issued special registration plates for motorcycles subject to Class G registration as follows:

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

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

(C) A surviving spouse may continue to use his or her deceased spouse’s honorably discharged veterans license plate
until the surviving spouse dies, remarries or does not renew the license plate.

(18) Racing theme special registration plates:

(A) The division may issue a series of special registration plates displaying national association for stock car auto racing themes;

(B) An annual fee of twenty-five dollars shall be charged for each special racing theme registration plate in addition to all other fees required by this chapter. All annual fees collected for each special racing theme registration plate shall be deposited into a special revolving fund to be used in the administration of this chapter;

(C) A special application fee of ten dollars shall be charged at the time of initial application as well as upon application for any duplicate or replacement registration plate, in addition to all other fees required by this chapter. All application fees shall be deposited into a special revolving fund to be used in the administration of this chapter.

(19) The division may issue recipients of the navy cross, distinguished service cross, distinguished flying cross, air force cross or silver star special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any recipient of the navy cross, distinguished service cross, distinguished flying cross, air force cross or silver star a registration plate for a vehicle titled in the name of the qualified applicant bearing letters or numbers. A separate registration plate shall be designed by the commissioner of motor vehicles for each award that denotes that those individuals who are granted this special registration plate are recipients of the navy cross, distinguished service cross, distinguished flying cross, air force cross or silver star, as applicable.

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

(C) A surviving spouse may continue to use his or her deceased spouse’s navy cross, distinguished service cross, distinguished flying cross, air force cross or silver star special registration plate until the surviving spouse dies, remarries or does not renew the special registration plate.

(D) A recipient of a navy cross, distinguished flying cross, distinguished service cross, air force cross or silver star license plate as described in this subdivision for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge an annual fee of fifteen dollars, in addition to all other fees required by this chapter, for the second plate.

(d) The commissioner shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code regarding the proper forms to be used in making application for the special license plates authorized by this section.

(e)(1) Nothing in this section may be construed to require a charge for a free prisoner of war license plate or a free recipient of the congressional medal of honor license plate for a vehicle titled in the name of the qualified applicant as authorized by other provisions of this code.

(2) A surviving spouse may continue to use his or her deceased spouse’s prisoner of war or congressional medal of honor license plate until the surviving spouse dies, remarries or does not renew the license plate.

(3) Qualified former prisoners of war and recipients of the congressional medal of honor may obtain a second special
registration plate for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge an annual fee of fifteen dollars, in addition to all other fees required by this chapter, for the second special plate.

(f) The division may issue special ten-year registration plates as follows:

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

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

(g) The provisions of this section may not be construed to exempt any registrant from maintaining motor vehicle liability insurance as required by section three, article two-a, chapter seventeen-d of this code or from paying personal property taxes on any motor vehicle as required by section three-a of this article.

(h) The commissioner may, in his or her discretion, issue a registration plate of reflectorized material suitable for permanent use on motor vehicles, trailers and semitrailers, together with appropriate devices to be attached to the registration to indicate the year for which the vehicles have been properly registered or the date of expiration of the registration. The
(i) Any license plate issued or renewed pursuant to this chapter, which is paid for by a check that is returned for nonsufficient funds, is void without further notice to the applicant. The applicant may not reinstate the registration until the returned check is paid by the applicant in cash, money order or certified check and all applicable fees assessed as a result thereof have been paid.

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-3a. Special registration of antique motor vehicles and motorcycles; definition, registration and use of classic motor vehicles and classic motorcycles.

(a) The annual registration fee for any antique motor vehicle or motorcycle as defined in this section is two dollars. “Antique motor vehicle” means any motor vehicle which is more than twenty-five years old and is owned solely as a collector’s item. “Antique motorcycle” means any motorcycle which is more than twenty-five years old and is owned solely as a collector’s item.

“Classic motor vehicle” means a motor vehicle which is more than twenty-five years old and is registered pursuant to section three of this article and is used for general transportation. “Classic motorcycle” means a motorcycle which is more than twenty-five years old and is registered pursuant to section three of this article and is used for general transportation.

(b) Except as otherwise provided in this section, antique motor vehicles or motorcycles may not be used for general transportation but may only be used for:

(1) Participation in club activities, exhibits, tours, parades and similar events;

(2) The purpose of testing their operation, obtaining repairs or maintenance and transportation to and from events as described in subdivision (1); and
Recreational purposes on Saturdays, Sundays and holidays: *Provided,* That a classic motor vehicle or a classic motorcycle as defined in this section may be registered under the applicable class at the applicable registration fee set forth in section three of this article and may be used for general transportation.

(c) A West Virginia motor vehicle or motorcycle displaying license plates of the same year of issue as the model year of the antique motor vehicle or motorcycle, as authorized in this section, may be used for general transportation purposes if the following conditions are met:

(1) The license plate's physical condition has been inspected and approved by the division of motor vehicles;

(2) The license plate is registered to the specific motor vehicle or motorcycle by the division of motor vehicles;

(3) The owner of the motor vehicle or motorcycle annually registers the motor vehicle or motorcycle and pays an annual registration fee for the motor vehicle or motorcycle equal to that charged to obtain regular state license plates;

(4) The motor vehicle or motorcycle passes an annual safety inspection; and

(5) The motor vehicle or motorcycle displays a sticker attached to the license plate, issued by the division, indicating that the motor vehicle or motorcycle may be used for general transportation.

(d) If more than one request is made for license plates having the same number, the division shall accept only the first application.

(e) The commissioner may promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code as may be necessary or convenient for the carrying out of the provisions of this section.
CHAPTER 17C. TRAFFIC REGULATIONS
AND LAWS OF THE ROAD.

ARTICLE 13. STOPPING, STANDING AND PARKING.

§17C-13-6. Stopping, standing or parking privileges for persons with a mobility impairment; definition; qualification; special registration plates and removable windshield placards; expiration; application; violation; penalties.

(a) Any owner of a Class A or Class G motor vehicle subject to registration under the provisions of article three, chapter seventeen-a of this code, who is:

(1) A person with a mobility impairment;

(2) A relative of a person with a mobility impairment;

(3) A person who regularly resides with a person with a mobility impairment; or

(4) A person who regularly transports a person who has a mobility impairment, may submit an application for a special registration plate or a removable windshield placard.

(b) Any person with a mobility impairment, any relative of a person with a mobility impairment, any person who regularly resides with a person with a mobility impairment or any person who regularly transports a person who has a mobility impairment may submit an application for a special registration plate or a removable windshield placard or both for a Class A or a Class G vehicle by submitting to the commissioner:

(1) An application on a form prescribed and furnished by the commissioner, specifying whether the applicant desires a special registration plate, a removable windshield placard, or both; and

(2) A certificate issued by a licensed physician stating that the applicant or the applicant's relative is a person with a mobility impairment, or that the person regularly residing with the applicant or regularly transported by the applicant is a
person with a mobility impairment, as defined in this section, and furthermore, the physician shall specify whether the disability is temporary (not to exceed six months) or permanent (one to five years or more in expected duration).

Upon receipt of the completed application, the physician’s certificate and the regular registration fee for the applicant’s vehicle class, if the commissioner finds that the applicant qualifies for the special registration plate or a removable windshield placard as provided in this section, he or she shall issue to the applicant a special registration plate (upon remittance of the regular registration fee), or a removable windshield placard (red for temporary and blue for permanent), or both. Upon request, the commissioner shall also issue to any otherwise qualified applicant one additional placard having the same expiration date as the applicant’s original placard. The placard shall be displayed by hanging it from the interior rearview mirror of the motor vehicle so that it is conspicuously visible from outside the vehicle when parked in a designated handicapped parking space. The placard may be removed from the rearview mirror whenever the vehicle is being operated to ensure clear vision and safe driving. Only in the event that there is no suitable rearview mirror in the vehicle may the placard be displayed on the dashboard of the vehicle.

(c) As used in this section, the following terms have the meanings ascribed to them in this subsection:

1. A person with a “mobility impairment” means a person who, as determined by a licensed physician:

   (A) Cannot walk two hundred feet without stopping to rest;

   (B) Cannot walk without the use of or assistance from a brace, cane, crutch, prosthetic device, wheelchair, other assistive device or another person;

   (C) Is restricted by lung disease to such an extent that the person’s force (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter or the
arterial oxygen tension is less than sixty mm/hg on room air at rest;

(D) Uses portable oxygen;

(E) Has a cardiac condition to such an extent that the person’s functional limitations are classified in severity as Class III or Class IV according to standards established by the American heart association; or

(F) Is severely limited in his or her ability to walk because of an arthritic, neurological, orthopedic or other physical condition;

(2) “Special registration plate” means a registration plate that displays the international symbol of access in a color that contrasts with the background, in letters and numbers the same size as those on the plate, and which may be used in lieu of a regular registration plate;

(3) “Removable windshield placard” (permanent or temporary) means a two-sided, hanger style placard measuring three inches by nine and one-half inches, with all of the following on each side:

(A) The international symbol of access, measuring at least three inches in height, centered on the placard, in white on a blue background for permanent designations and in white on a red background for temporary designations;

(B) An identification number measuring one inch in height;

(C) An expiration date in numbers measuring one inch in height; and

(D) The seal or other identifying symbol of the issuing authority;

(4) “Regular registration fee” means the standard registration fee for a vehicle of the same class as the applicant’s;
(5) "Public entity" means state or local government or any department, agency, special purpose district or other instrumentality of a state or local government;

(6) "Public facility" means all or any part of any buildings, structures, sites, complexes, roads, parking lots or other real or personal property, including the site where the facility is located;

(7) "Place(s) of public accommodation" means a facility or facilities operated by a private entity whose operations affect commerce and fall within at least one of the following categories:

(A) Inns, hotels, motels and other places of lodging;

(B) Restaurants, bars or other establishments serving food or drink;

(C) Motion picture houses, theaters, concert halls, stadiums or other places of exhibition or entertainment;

(D) Auditoriums, convention centers, lecture halls or other places of public gatherings;

(E) Bakeries, grocery stores, clothing stores, hardware stores, shopping centers or other sales or rental establishments;

(F) Laundromats, dry cleaners, banks, barber and beauty shops, travel agencies, shoe repair shops, funeral parlors, gas or service stations, offices of accountants and attorneys, pharmacies, insurance offices, offices of professional health care providers, hospitals or other service establishments;

(G) Terminals, depots or other stations used for public transportation;

(H) Museums, libraries, galleries or other places of public display or collection;

(I) Parks, zoos, amusement parks or other places of recreation;
(J) Public or private nursery, elementary, secondary, undergraduate or post-graduate schools or other places of learning and day care centers, senior citizen centers, homeless shelters, food banks, adoption agencies or other social services establishments; and

(K) Gymnasiums, health spas, bowling alleys, golf courses or other places of exercise or recreation;

(8) "Commercial facility" means a facility whose operations affect commerce and which are intended for nonresidential use by a private entity.

Any person who falsely or fraudulently obtains or seeks to obtain the special plate or the removable windshield placard provided for in this section, and any person who falsely certifies that a person is mobility impaired in order that an applicant may be issued the special registration plate or windshield placard hereunder, is guilty of a misdemeanor and, upon conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined one hundred dollars.

(d) The commissioner shall set the expiration date for special registration plates and permanent removable windshield placards on the last day of a given month and year, to be valid for a minimum of one year but not more than five years, after which time a new application must be submitted to the commissioner. After the commissioner receives the new application, signed by a certified physician, the commissioner shall issue: (i) A new special registration plate or new permanent removable windshield placard; or (ii) official labels imprinted with the new expiration date and designed so as to be placed over the old dates on the original registration plate or windshield placard.

(e) The commissioner shall set the expiration date of temporary removable windshield placards to be valid for a period of approximately six months after the application was received and approved by the commissioner.

(f) The commissioner shall issue to each applicant who is granted a special registration plate or windshield placard an
identification card bearing the applicant's name, assigned identification number and expiration date. The applicant must thereafter carry this identification card on his or her person whenever parking in a handicapped parking space.

(g) A handicapped parking space should comply with the provisions of the Americans with Disabilities Act Guidelines, contained in 28 C.F.R. 36, Appendix A, Section 4.6. In particular, the parking space should be a minimum of eight feet wide with an adjacent access aisle for vans having side mounted handicap lifts. Access aisles should be marked using diagonal stripes or other appropriate markings denoting that the space is a no-parking zone. Lines or markings on the pavement or curbs for parking spaces and access aisles may be in any color, although blue is the generally accepted color for handicapped parking.

(h) A vehicle from any other state, United States territory or foreign country displaying an officially issued special registration plate, placard or decal bearing the international symbol of access, shall be recognized and accepted as meeting the requirements of this section, regardless of where the plate, placard or decal is mounted or displayed on the vehicle.

(i) Free stopping, standing or parking places marked with the international symbol of access shall be designated in close proximity to all public entities, including state, county and municipal buildings and facilities, places of public accommodation and commercial facilities. These parking places shall be reserved solely for persons with a mobility impairment during the hours that those buildings are open for business.

(j) Any person whose vehicle properly displays a valid, unexpired special registration plate or removable windshield placard may park the vehicle for unlimited periods of time in parking zones unrestricted as to length of parking time permitted. Provided, That this privilege does not mean that the vehicle may park in any zone where stopping, standing or parking is prohibited or which creates parking zones for special types of vehicles or which prohibits parking during heavy traffic periods.
during specified rush hours or where parking would clearly
present a traffic hazard. To the extent any provision of any
ordinance of any political subdivision of this state is contrary to
the provisions of this section, the provisions of this section take
precedence and apply.

The privileges provided for in this subsection apply only
during those times when the vehicle is being used for the
transportation of a person with a mobility impairment. Any
person who knowingly exercises, or attempts to exercise, these
privileges at a time when the vehicle is not being used for the
transportation of a person with a mobility impairment is guilty
of a misdemeanor and, upon conviction thereof, in addition to
any other penalty he or she may otherwise incur, shall be fined
one hundred dollars.

(k) Any person whose vehicle does not display a valid,
special registration plate or removable windshield placard may
not stop, stand or park a motor vehicle in an area designated,
zoned or marked for handicapped parking with signs or
instructions displaying the international symbol of access,
either by itself or with explanatory text. Such signs may be
mounted on a post or a wall in front of the handicapped parking
space and instructions may appear on the ground or pavement,
but use of both methods is preferred. Handicapped parking
spaces for vans having an eight-foot adjacent access aisle
should be designated as "van accessible" but may be used by
any vehicle displaying a valid special registration plate or
removable windshield placard. These spaces are intended solely
for persons with a mobility impairment, as defined in this
section: Provided, That any person in the act of transporting a
person with a mobility impairment as defined in this section,
may stop, stand or park a motor vehicle not displaying a special
registration plate or removable windshield placard in the area
designated for handicapped parking by the international symbol
of access for the limited purposes of loading or unloading a
passenger with a mobility impairment: Provided, however, That
the vehicle shall be promptly moved after the completion of this
limited purpose.
Any person who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined one hundred dollars.

(l) Signs erected in the future that designate areas as "handicapped parking" or that display the international symbol of access shall also include the words "$100 fine".

(m) No person may stop, stand or park a motor vehicle in an area designated or marked off as an access aisle adjacent to a van-accessible parking space or regular handicapped parking space. Any person, including a driver of a vehicle displaying a valid removable windshield placard or special registration plate, who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined one hundred dollars.

(n) Parking enforcement personnel who otherwise enforce parking violations are hereby authorized to issue citations for violations of this section.

(o) Law-enforcement agencies may establish a program to utilize trained volunteers to collect information necessary to issue citations to persons who illegally park in designated handicapped parking spaces. Any law-enforcement agency choosing to establish a program shall provide for workers' compensation and liability coverage. The volunteers shall photograph the illegally parked vehicle and complete a form, to be developed by supervising law-enforcement agencies, that includes the vehicle's license plate number, date, time and location of the illegally parked vehicle. The photographs must show the vehicle in the handicapped space and a readable view of the license plate. Within the discretion of the supervising law-enforcement agency, the volunteers may issue citations or the volunteers may submit the photographs of the illegally parked vehicle and the form to the supervising law-enforcement agency, who may issue a citation, which includes the photographs and the form, to the owner of the illegally parked vehicle. Volunteers shall be trained on the requirements for citations for vehicles parked in marked, zoned or designated...
handicapped parking areas by the supervising law-enforcement agency.

(p) The commissioner shall establish a grace period for individuals who, on the effective date of the amendment adding this subsection, hold special registration plates or removable windshield placards bearing no expiration date to submit their applications for newly issued special registration plates and windshield placards, after which time any undated registration plate or windshield placard is invalid and subject to confiscation by any duly appointed law-enforcement officer.

(q) The commissioner shall adopt and promulgate rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to effectuate the provisions of this section.

CHAPTER 179

(Com. Sub. for H. B. 4153 —By Delegate Warner)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article four, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting an insurance claimant with a total loss which is exclusively cosmetic to choose to retain the vehicle by providing for the issuance of a title with the designation “cosmetic total loss”.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. TRANSFERS OF TITLE OR INTEREST.
§17A-4-10. Salvage certificates for certain wrecked or damaged vehicles; fee; penalty.

(a) In the event a motor vehicle is determined to be a total loss or otherwise designated as "totaled" by any insurance company or insurer, and upon payment of an agreed price as a claim settlement to any insured or claimant owner for the purchase of the vehicle, the insurance company or the insurer shall receive the certificate of title and the vehicle except that an insured or claimant owner may choose to retain possession of a cosmetically damaged vehicle, as provided in subdivision (2) of this subsection. The term "total loss" means a motor vehicle which has sustained damages equivalent to seventy-five percent or more of the market value as determined by a nationally accepted used car value guide. The insurance company or insurer shall within ten days determine if the vehicle is repairable, cosmetically damaged or nonrepairable and surrender the certificate of title and a copy of the claim settlement to the division of motor vehicles. If the insurance company or insurer determines that the vehicle is repairable, the division shall issue a "salvage certificate", on a form prescribed by the commissioner, in the name of the insurance company or the insurer. The certificate shall contain on the reverse thereof spaces for one successive assignment before a new certificate at an additional fee is required.

(1) Upon the sale of the vehicle the insurance company or insurer shall endorse the assignment of ownership on the salvage certificate and deliver it to the purchaser. The vehicle shall not be titled or registered for operation on the streets or highways of this state unless there is compliance with subsection (c) of this section. The division shall charge a fee of fifteen dollars for each salvage title issued.

(2) If the insurance company or insurer determines the damage to a totaled vehicle is exclusively cosmetic and no repair is necessary in order to legally and safely operate the motor vehicle on the roads and highways of this state, the
insurance company or insurer shall upon payment of the claim settlement submit the certificate of title to the division.

(A) The division shall, without further inspection, issue a title branded "cosmetic total loss" to the insured or claimant owner if the insured or claimant owner wishes to retain possession of the vehicle, in lieu of a "salvage certificate." A fee of five dollars shall be charged for each "cosmetic total loss" title issued. The terms "cosmetically damaged" and "cosmetic total loss" do not include any vehicle which has been damaged by flood or fire. The designation "cosmetic total loss" on a title cannot be changed.

(B) If the insured or claimant owner elects not to take possession of the vehicle and the insurance company or insurer retains possession, the division shall issue a cosmetic total loss salvage certificate to the insurance company or insurer. The division shall charge a fee of fifteen dollars for each cosmetic total loss salvage certificate issued. The division shall, upon surrender of the cosmetic total loss salvage certificate issued under the provisions of this paragraph, and payment of the five percent privilege tax on the fair market value of the vehicle as determined by the commissioner, issue a title branded "cosmetic total loss" without further inspection.

(3) If the insurance company or insurer determines that the damage to a totaled vehicle renders it nonrepairable, incapable of safe operation for use on roads and highways and which has no resale value except as a source of parts or scrap, the insurance company or vehicle owner shall request that the division issue a nonrepairable motor vehicle certificate in lieu of a salvage certificate. The division shall issue a nonrepairable motor vehicle certificate without charge.

(b) Any owner, who scraps, compresses, dismantles or destroys a vehicle for which a certificate of title, nonrepairable motor vehicle certificate or salvage certificate has been issued, shall, within twenty days, surrender the certificate of title, nonrepairable motor vehicle certificate or salvage certificate to
the division for cancellation. Any person who purchases or acquires a vehicle as salvage or scrap, to be dismantled, compressed or destroyed, shall within twenty days surrender the certificate to the division.

(c) If the motor vehicle is a "reconstructed vehicle" as defined in section one, article one of this chapter, it may not be titled or registered for operation until it has been inspected by an official state inspection station and by a representative of the division of motor vehicles who has been designated by the commissioner as an investigator. Following an approved inspection, an application for a new certificate of title may be submitted to the division; however, the applicant shall be required to retain all receipts for component parts, equipment and materials used in the reconstruction. The salvage certificate must also be surrendered to the division before a certificate of title may be issued.

(d) The owner or title holder of any motor vehicle titled in this state which has previously been branded in this state or another state as "salvage," "reconstructed," "cosmetic total loss," "cosmetic total loss salvage," "flood" or "fire" or an equivalent term under another state's laws shall, upon becoming aware of the brand, apply for and receive a title from the division of motor vehicles on which the brand "reconstructed," "salvage," "cosmetic total loss" "cosmetic total loss salvage," "flood" or "fire" is shown. A fee of five dollars will be charged for each title so issued.

(e) If application is made for title to a motor vehicle, the title to which has previously been branded "reconstructed," "salvage," "cosmetic total loss," cosmetic total loss salvage," "flood" or "fire" by the division of motor vehicles under this section and said application is accompanied by a title from another state which does not carry the brand, the division shall, before issuing the title, affix the brand "reconstructed," "cosmetic total loss," "cosmetic total loss salvage," "flood" or "fire" to the title. The privilege tax paid on a motor vehicle
provided that the vehicle is not less than thirty years old and that the
1375 the division shall notify the vehicle owner in writing not more than
1380 fifteen days after the date of receipt of the application. If the vehicle
1390 is found to be less than thirty years old, the division shall notify the
1395 owner in writing not more than fifteen days after the date of receipt of
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1441 owner in writing not more than fifteen days after the date of receipt of
1442 the application. If the vehicle is found to be less than thirty years old,
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AN ACT to amend and reenact sections two, three, four, seven, eight, eight-a, nine, ten, eleven, twelve, thirteen, fourteen and sixteen, article six-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section eighteen, all relating to generally clarifying the relationship between automobile dealers, distributors and manufacturers; modifying definitions; restricting the cancellation of dealer contracts; lengthening certain notification provisions; providing when compensation is due dealer; listing and modifying prohibited practices; addressing the succession of dealers in the case of incapacitation; modifying relocation warranty obligations; modifying acceptance of vehicles and risk of loss provisions; providing for actions for damages and venue; and specifying that West Virginia law applies with regard to franchise agreements, contracts or other agreements between a new motor vehicle dealer and a manufacturer or distributor or any subsidiary, affiliate or partner of a manufacturer or distributor.

\textit{Be it enacted by the Legislature of West Virginia:}

That sections two, three, four, seven, eight, eight-a, nine, ten, eleven, twelve, thirteen, fourteen and sixteen, article six-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said
ARTICLE 6A. MOTOR VEHICLE DEALERS, DISTRIBUTORS, WHOLESALE-TERS AND MANUFACTURERS.

§17A-6A-8. Reasonable compensation to dealer.
§17A-6A-8a. Compensation to dealers for service rendered.
§17A-6A-11. Where motor vehicle dealer deceased or incapacitated.
§17A-6A-12. Relocation.
§17A-6A-14. Acceptance of vehicles; risk of loss or damage.
§17A-6A-16. Actions at law; damages.
§17A-6A-18. West Virginia law to apply.


In accord with the settled public policy of this state to protect the rights of its citizens, each franchise or agreement between a manufacturer or distributor and a dealer or dealership which is located in West Virginia, or is to be performed in substantial part in West Virginia, shall be construed and governed by the laws of the state of West Virginia, regardless of the state in which it was made or executed and of any provision in the franchise or agreement to the contrary.

The provisions of this article apply only to any franchises and agreements entered into, continued, modified or renewed subsequent to the effective date of this article.


For the purposes of this article, the words and phrases defined in this section have the meanings ascribed to them, except where the context clearly indicates a different meaning.
“Dealer agreement” means the franchise, agreement or contract in writing between a manufacturer, distributor and a new motor vehicle dealer, which purports to establish the legal rights and obligations of the parties to the agreement or contract with regard to the purchase, lease or sale of new motor vehicles, accessories, service and sale of parts for motor vehicles.

“Designated family member” means the spouse, child, grandchild, parent, brother or sister of a deceased new motor vehicle dealer who is entitled to inherit the deceased dealer’s ownership interest in the new motor vehicle dealership under the terms of the dealer’s will, or who has otherwise been designated in writing by a deceased dealer to succeed the deceased dealer in the new motor vehicle dealership, or is entitled to inherit under the laws of intestate succession of this state. With respect to an incapacitated new motor vehicle dealer, the term means the person appointed by a court as the legal representative of the new motor vehicle dealer’s property. The term also includes the appointed and qualified personal representative and the testamentary trustee of a deceased new motor vehicle dealer. However, the term means only that designated successor nominated by the new motor vehicle dealer in a written document filed by the dealer with the manufacturer or distributor, if such a document is filed.

“Distributor” means any person, resident or nonresident, who, in whole or in part, offers for sale, sells or distributes any new motor vehicle to a new motor vehicle dealer or who maintains a factory representative, resident or nonresident, or who controls any person, resident or nonresident, who, in whole or in part, offers for sale, sells or distributes any new motor vehicle to a new motor vehicle dealer.

“Established place of business” means a permanent, enclosed commercial building located within this state easily accessible and open to the public at all reasonable times and at which the business of a new motor vehicle dealer, including the display and repair of motor vehicles, may be lawfully carried on
in accordance with the terms of all applicable building codes, zoning and other land-use regulatory ordinances and as licensed by the division of motor vehicles.

"Factory branch" means an office maintained by a manufacturer or distributor for the purpose of selling or offering for sale vehicles to a distributor, wholesaler or new motor vehicle dealer, or for directing or supervising, in whole or in part, factory or distributor representatives. The term includes any sales promotion organization maintained by a manufacturer or distributor which is engaged in promoting the sale of a particular make of new motor vehicles in this state to new motor vehicle dealers.

"Factory representative" means an agent or employee of a manufacturer, distributor or factory branch retained or employed for the purpose of making or promoting the sale of new motor vehicles or for supervising or contracting with new motor vehicle dealers or proposed motor vehicle dealers.

"Good faith" means honesty in fact and the observation of reasonable commercial standards of fair dealing in the trade.

"Manufacturer" means any person who manufactures or assembles new motor vehicles; or any distributor, factory branch or factory representative.

"Motor vehicle" means that term as defined in section one, article one of this chapter, including motorcycle and recreational vehicle as defined in subsections (c) and (nn), respectively, of said section, but not including a tractor or farm equipment.

"New motor vehicle" means a motor vehicle which is in the possession of the manufacturer, distributor or wholesaler, or has been sold only to a new motor vehicle dealer and on which the original title has not been issued from the new motor vehicle dealer.
“New motor vehicle dealer” means a person who holds a dealer agreement granted by a manufacturer or distributor for the sale of its motor vehicles, who is engaged in the business of purchasing, selling, leasing, exchanging or dealing in new motor vehicles, service of said vehicles, warranty work and sale of parts who has an established place of business in this state and is licensed by the division of motor vehicles.

“Person” means a natural person, partnership, corporation, association, trust, estate or other legal entity.

“Proposed new motor vehicle dealer” means a person who has an application pending for a new dealer agreement with a manufacturer or distributor. Proposed motor vehicle dealer does not include a person whose dealer agreement is being renewed or continued.

“Relevant market area” means the area located within a fifteen air-mile radius around an existing same line-make new motor vehicle dealership.


(1) Notwithstanding any agreement, a manufacturer or distributor shall not cancel, terminate, fail to renew or refuse to continue any dealer agreement with a new motor vehicle dealer unless the manufacturer or distributor has complied with all of the following:

(a) Satisfied the notice requirement of section seven of this article;

(b) Acted in good faith;

(c) Engaged in full and open communication with franchised dealer; and

(d) Has good cause for the cancellation, termination, nonrenewal or discontinuance.
Notwithstanding any agreement, good cause exists for the purposes of a termination, cancellation, nonrenewal or discontinuance under subdivision (d), subsection (1) of this section when both of the following occur:

(a) There is a failure by the new motor vehicle dealer to comply with a provision of the dealer agreement and the provision is both reasonable and of material significance to the relationship between the manufacturer or distributor and the new motor vehicle dealer; and

(b) The manufacturer or distributor first acquired actual or constructive knowledge of the failure not more than eighteen months prior to the date on which notification was given pursuant to section seven of this article.

If the failure by the new motor vehicle dealer to comply with a provision of the dealer agreement relates to the performance of the new motor vehicle dealer in sales or service, good cause exists for the purposes of a termination, cancellation, nonrenewal or discontinuance under subsection (1) of this section when the new motor vehicle dealer failed to effectively carry out the performance provisions of the dealer agreement if all of the following have occurred:

(a) The new motor vehicle dealer was given written notice by the manufacturer or distributor of the failure;

(b) The notification stated that the notice of failure of performance was provided pursuant to this article;

(c) The new motor vehicle dealer was afforded a reasonable opportunity to exert good faith efforts to carry out the dealer agreement; and

(d) The failure continued for more than three hundred sixty days after the date notification was given pursuant to subdivision (a) of this subsection.

Notwithstanding any agreement, prior to the termination, cancellation, nonrenewal or discontinuance of any dealer agreement, the manufacturer or distributor shall furnish notice of the termination, cancellation, nonrenewal or discontinuance to the new motor vehicle dealer as follows:

(a) Except as provided in subdivision (c) or (d) of this subsection, notice shall be made not less than one hundred twenty days prior to the effective date of the termination, cancellation, nonrenewal or discontinuance.

(b) Notice shall be by certified mail with restrictive delivery to the new motor vehicle dealer principal and shall contain the following:

(i) A statement of intention to terminate, cancel, not renew or discontinue the dealer agreement;

(ii) A detailed written statement of all reasons for the termination, cancellation, nonrenewal or discontinuance. The statement shall include, at a minimum, a complete explanation of each reason upon which the manufacturer or distributor relies to support its proposed action, along with all supporting documentation which is material to the proposed action and available to the manufacturer or distributor at the time of termination, cancellation, nonrenewal or discontinuance; and

(iii) The date on which the termination, cancellation, nonrenewal or discontinuance takes effect.

(c) Notwithstanding subdivision (a) of this subsection, notice shall be made not less than thirty days prior to the effective date of the termination, cancellation, nonrenewal or discontinuance for any of the following reasons:

(i) Insolvency of the new motor vehicle dealer or the filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law;
(ii) Failure of the new motor vehicle dealer to conduct his or her customary sales and service operations during his or her customary business hours for seven consecutive business days;

(iii) Conviction of the new motor vehicle dealer or its principal owners of a crime, but only if the crime is punishable by imprisonment in excess of one year under the law under which the dealer was convicted or the crime involved theft, dishonesty or false statement regardless of the punishment;

(iv) Revocation of a motor vehicle dealership license in accordance with section eighteen, article six of this chapter; or

(v) A fraudulent misrepresentation by the new motor vehicle dealer to the manufacturer or distributor, which is material to the dealer agreement.

(d) Notwithstanding subdivision (a) of this subsection, notice shall be made not less than twelve months prior to the effective date of a termination, cancellation, nonrenewal or discontinuance if a manufacturer or distributor discontinues production of the new motor vehicle dealer’s product line or discontinues distribution of the product line in this state.

§17A-6A-8. Reasonable compensation to dealer.

(1) Upon the termination, cancellation, nonrenewal or discontinuance of any dealer agreement, the new motor vehicle dealer shall be allowed fair and reasonable compensation by the manufacturer or distributor for the following:

(a) Any new motor vehicle inventory, manufactured for sale in the United States, purchased from the manufacturer, distributor or other dealers, which has not been materially altered, substantially damaged or driven for more than seven hundred fifty miles, except that for any new motorcycle inventory purchased from the manufacturer or distributor, that inventory must not have been materially altered, substantially damaged or driven for more than fifty miles;
(b) Supplies and parts inventory purchased from the manufacturer or distributor and listed in the manufacturer’s or distributor’s current parts catalog;

(c) Equipment, furnishings and signs purchased from the manufacturer or distributor; and

(d) Special computer software, hardware, license fees and other programs mandated by the manufacturer to provide training or communication with the manufacturer.

(2) Upon the termination, cancellation, nonrenewal or discontinuance of a dealer agreement by the manufacturer or distributor, the manufacturer or distributor shall also pay to the new motor vehicle dealer a sum equal to the current, fair rental value of his or her established place of business for a period of three years from the effective date of termination, cancellation, nonrenewal or discontinuance, or the remainder of the lease, whichever is less. If the dealer, directly or indirectly, owns the dealership facility, the manufacturer shall pay the dealer a sum equal to the reasonable rental value of the dealership premises for three years. However, the dealer shall have the obligation to mitigate his or her damages, including, but not limited to, listing the facility with a commercial real estate agent and other reasonable steps to sell or lease the property. During this three-year period the manufacturer shall have the right to occupy and use the facilities until such time as the dealer is able to otherwise sell or lease the property to another party. The payment required by this subsection does not apply to any termination, cancellation, nonrenewal or discontinuance made pursuant to subsection (c), section five of this article.

§17A-6A-8a. Compensation to dealers for service rendered.

(1) Every motor vehicle manufacturer, distributor or wholesaler, factory branch or distributor branch, or officer, agent or representative thereof, shall:
(a) Specify in writing to each of its motor vehicle dealers, the dealer's obligation for delivery, preparation, warranty and factory recall services on its products;

(b) Compensate the motor vehicle dealer for warranty and factory recall service required of the dealer by the manufacturer, distributor or wholesaler, factory branch or distributor branch, or officer, agent or representative thereof; and

(c) Provide the dealer the schedule of compensation to be paid the dealer for parts, work and service in connection with warranty and recall services and the time allowance for the performance of the work and service.

(2) In no event may:

(a) The schedule of compensation fail to compensate the dealers for the work and services they are required to perform in connection with the dealer's delivery and preparation obligations, or fail to adequately and fairly compensate the dealers for labor, parts and other expenses incurred by the dealer to perform under and comply with manufacturer's warranty agreements and factory recalls;

(b) Any manufacturer, distributor or wholesaler, or representative thereof, pay its dealers an amount of money for warranty or recall work that is less than that charged by the dealer to the retail customers of the dealer for nonwarranty and nonrecall work of the like kind; and

(c) Any manufacturer, distributor or wholesaler, or representative thereof, compensate for warranty and recall work based on a flat-rate figure that is less than what the dealer charges for retail work.

(3) It is a violation of this section for any manufacturer, distributor, wholesaler or representative to coerce or attempt to coerce any dealer in any manner, either written or verbal, with threats of surcharges, limited allocation, audits, charge backs or
36 other retaliation, if the dealer seeks to recover its nonwarranty
37 retail rate for warranty and recall work.

38 (4) All claims made by motor vehicle dealers pursuant to
39 this section for compensation for delivery, preparation, war-
40 ranty and recall work, including labor, parts and other expenses,
41 shall be paid by the manufacturer within thirty days after
42 approval and shall be approved or disapproved by the manufac-
43 turer within thirty days after receipt. When any claim is
44 disapproved, the dealer shall be notified in writing of the
45 grounds for disapproval. No claim which has been approved
46 and paid may be charged back to the dealer unless it can be
47 shown that the claim was false or fraudulent, that the repairs
48 were not properly made or were unnecessary to correct the
49 defective condition or the dealer failed to reasonably substanti-
50 ate the claim in accordance with the written requirements of the
51 manufacturer or distributor in effect at the time the claim arose.
52 No charge back may be made until the dealer has had notice
53 and an opportunity to support the claim in question. No
54 otherwise valid reimbursement claims may be denied once
55 properly submitted within manufacturers’ submission guide-
56 lines due to a clerical error or omission or based on a different
57 level of technician technical certification or the dealer’s failure
58 to subscribe to any manufacturer’s computerized training
59 programs.

60 (5) Notwithstanding the terms of a franchise agreement or
61 provision of law in conflict with this section, the dealer’s
62 delivery, preparation, warranty and recall obligations consti-
63 tutes the dealer’s sole responsibility for product liability as
64 between the dealer and manufacturer, and, except for a loss
65 caused by the dealer’s failure to adhere to these obligations, a
66 loss caused by the dealer’s negligence or intentional miscon-
67 duct, or a loss caused by the dealer’s modification of a product
68 without manufacturer authorization, the manufacturer shall
69 reimburse the dealer for all loss incurred by the dealer, includ-
70 ing legal fees, court costs and damages, as a result of the dealer
71 having been named a party in a product liability action.

(1) Compensation for new motor vehicle inventory under subdivision (a), subsection (1), section eight of this article shall be paid within sixty days after the effective date of the termination, cancellation, nonrenewal or discontinuance. Compensation for items of personal property required by subdivisions (b), (c) and (d), subsection (1), section eight of this article shall be paid within sixty days after the effective date of the termination, cancellation, nonrenewal or discontinuance if the new motor vehicle dealer has met all reasonable requirements of the dealer agreement with respect to the return of the repurchased personal property, including providing clear title.

(2) Reasonable compensation pursuant to subdivision (a), subsection (1), section eight of this article may not be less than the new motor vehicle dealer's net acquisition cost, including any special promotions ordered by the manufacturer, such as advertising charges, and special tools purchased from the manufacturer or distributor within three years of the date of termination, cancellation, nonrenewal or discontinuance. Reasonable compensation pursuant to subdivision (b) of said subsection shall be the amount stated in the manufacturer's or distributor's current parts price list. Reasonable compensation pursuant to subdivisions (c) and (d) of said subsection shall be the fair market value of the personal property.

(3) In the event payment is not made within ninety days as provided in subsection (1) of this section, interest accrues on all amounts due the new motor vehicle dealer at a rate of twelve percent per annum.


(1) A manufacturer or distributor may not require any new motor vehicle dealer in this state to do any of the following:

(a) Order or accept delivery of any new motor vehicle, part or accessory of the vehicle, equipment or any other commodity
not required by law which was not voluntarily ordered by the new motor vehicle dealer. This section does not prevent the manufacturer or distributor from requiring that new motor vehicle dealers carry a reasonable inventory of models offered for sale by the manufacturer or distributor;

(b) Order or accept delivery of any new motor vehicle with special features, accessories or equipment not included in the list price of the new motor vehicle as publicly advertised by the manufacturer or distributor;

(c) Unreasonably participate monetarily in any advertising campaign or contest, or purchase any promotional materials, display devices, display decorations, brand signs and dealer identification, nondiagnostic computer equipment and displays, or other materials at the expense of the new motor vehicle dealer;

(d) Enter into any agreement with the manufacturer or distributor or do any other act prejudicial to the new motor vehicle dealer by threatening to terminate a dealer agreement or any contractual agreement or understanding existing between the dealer and the manufacturer or distributor. Notice in good faith to any dealer of the dealer’s violation of any terms or provisions of the dealer agreement is not a violation of this article;

(e) Change the capital structure of the new motor vehicle dealership or the means by or through which the dealer finances the operation of the dealership if the dealership at all times meets any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria;

(f) Refrain from participation in the management of, investment in or the acquisition of any other line of new motor vehicle or related products, provided that the dealer maintains a reasonable line of credit for each make or line of vehicle, remains in compliance with reasonable facilities requirements and makes no change in the principal management of the
Notwithstanding the terms of any franchise agreement, a manufacturer or distributor may not enforce any requirements, including facility requirements, that a new motor vehicle dealer establish or maintain exclusive facilities, personnel or display space, when the requirements are unreasonable considering current economic conditions and are not otherwise justified by reasonable business considerations. The burden of proving that current economic conditions or reasonable business considerations justify exclusive facilities is on the manufacturer or distributor and must be proven by a preponderance of the evidence;

(g) Change the location of the new motor vehicle dealership or make any substantial alterations to the dealership premises, where to do so would be unreasonable; and

(h) Prospectively assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability imposed by this article or require any controversy between a new motor vehicle dealer and a manufacturer or distributor to be referred to a person other than the duly constituted courts of the state or the United States, if the referral would be binding upon the new motor vehicle dealer.

(2) A manufacturer or distributor may not do any of the following:

(a) Fail to deliver new motor vehicles or new motor vehicle parts or accessories within a reasonable time and in reasonable quantities relative to the new motor vehicle dealer’s market area and facilities, unless the failure is caused by acts or occurrences beyond the control of the manufacturer or distributor, or unless the failure results from an order by the new motor vehicle dealer in excess of quantities reasonably and fairly allocated by the manufacturer or distributor. No manufacturer or distributor may penalize a new motor vehicle dealer for an alleged failure to meet sales quotas where the alleged failure is due to actions of the manufacturer or distributor;
(b) Refuse to disclose to a new motor vehicle dealer the method and manner of distribution of new motor vehicles by the manufacturer or distributor, including any numerical calculation or formula used, nationally or within the dealers market, to make the allocations;

(c) Refuse to disclose to a new motor vehicle dealer the total number of new motor vehicles of a given model, which the manufacturer or distributor has sold during the current model year within the dealer’s marketing district, zone or region, whichever geographical area is the smallest;

(d) Increase prices of new motor vehicles which the new motor vehicle dealer had ordered and then eventually delivered to the same retail consumer for whom the vehicle was ordered, if the order was made prior to the dealer’s receipt of the written official price increase notification. A sales contract signed by a private retail consumer and binding on the dealer is evidence of each order. In the event of manufacturer or distributor price reductions or cash rebates, the amount of any reduction or rebate received by a dealer shall be passed on to the private retail consumer by the dealer. Any price reduction in excess of five dollars shall apply to all vehicles in the dealer’s inventory which were subject to the price reduction. A price difference applicable to new model or series motor vehicles at the time of the introduction of the new models or the series is not a price increase or price decrease. This subdivision does not apply to price changes caused by the following:

(i) The addition to a motor vehicle of required or optional equipment pursuant to state or federal law;

(ii) In the case of foreign made vehicles or components, revaluation of the United States dollar; or

(iii) Any increase in transportation charges due to an increase in rates charged by a common carrier and transporters;
(e) Offer any refunds or other types of inducements to any dealer for the purchase of new motor vehicles of a certain line make to be sold to this state or any political subdivision of this state without making the same offer available upon request to all other new motor vehicle dealers of the same line make;

(f) Release to an outside party, except under subpoena or in an administrative or judicial proceeding to which the new motor vehicle dealer or the manufacturer or distributor are parties, any business, financial or personal information which has been provided by the dealer to the manufacturer or distributor, unless the new motor vehicle dealer gives his or her written consent;

(g) Deny a new motor vehicle dealer the right to associate with another new motor vehicle dealer for any lawful purpose;

(h) Establish a new motor vehicle dealership which would unfairly compete with a new motor vehicle dealer of the same line make operating under a dealer agreement with the manufacturer or distributor in the relevant market area. A manufacturer or distributor shall not be considered to be unfairly competing if the manufacturer or distributor is:

(i) Operating a dealership temporarily for a reasonable period.

(ii) Operating a dealership which is for sale at a reasonable price.

(iii) Operating a dealership with another person who has made a significant investment in the dealership and who will acquire full ownership of the dealership under reasonable terms and conditions.

(i) A manufacturer may not, except as provided by this section, directly or indirectly:

(i) Own an interest in a dealer or dealership;

(ii) Operate a dealership; or
(iii) Act in the capacity of a new motor vehicle dealer:

Provided, That a manufacturer may own an interest, other than stock in a publicly held company, solely for investment purposes.

(j) A manufacturer or distributor may own an interest in a franchised dealer, or otherwise control a dealership, for a period not to exceed twelve months from the date the manufacturer or distributor acquires the dealership if:

(i) The person from whom the manufacturer or distributor acquired the dealership was a franchised dealer; and

(ii) The dealership is for sale by the manufacturer or distributor at a reasonable price and on reasonable terms and conditions;

(k) The twelve-month period may be extended for an additional twelve months. Notice of any such extension of the original twelve-month period must be given to any dealer of the same line-make whose dealership is located in the same county, or within fifteen air miles of, the dealership owned or controlled by the manufacturer or distributor prior to the expiration of the original twelve-month period. Any dealer receiving the notice may protest the proposed extension within thirty days of receiving notice by bringing a declaratory judgment action in the circuit court for the county in which the new motor vehicle dealer is located to determine whether good cause exists for the extension;

(l) For the purpose of broadening the diversity of its dealer body and enhancing opportunities for qualified persons who are part of a group who have historically been underrepresented in its dealer body, or other qualified persons who lack the resources to purchase a dealership outright, but for no other purpose, a manufacturer or distributor may temporarily own an interest in a dealership if the manufacturer’s or distributor’s participation in the dealership is in a bona fide relationship with a franchised dealer who:
(i) Has made a significant investment in the dealership, subject to loss;
(ii) Has an ownership interest in the dealership; and
(iii) Operates the dealership under a plan to acquire full ownership of the dealership within a reasonable time and under reasonable terms and conditions;
(m) Unreasonably withhold consent to the sale, transfer or exchange of the dealership to a qualified buyer capable of being licensed as a new motor vehicle dealer in this state;
(n) Fail to respond in writing to a request for consent to a sale, transfer or exchange of a dealership within sixty days after receipt of a written application from the new motor vehicle dealer on the forms generally utilized by the manufacturer or distributor for such purpose and containing the information required therein. Failure to respond to the request within the sixty days is consent;
(o) Unfairly prevent a new motor vehicle dealer from receiving reasonable compensation for the value of the new motor vehicle dealership;
(p) Audit any motor vehicle dealer in this state for warranty parts or warranty service compensation, service compensation, service incentives, rebates or other forms of sales incentive compensation more than twelve months after the claim for payment or reimbursement has been made by the automobile dealer: Provided, That the provisions of this subsection does not apply where a claim is fraudulent. In addition, the manufacturer or distributor is responsible for reimbursing the audited dealer for all copying, postage and administrative costs incurred by the dealer during the audit. Any charges to a dealer as a result of the audit must be separately billed to the dealer;
(q) Unreasonably restrict a dealer’s ownership of a dealership through noncompetition covenants, site control, sublease,
collateral pledge of lease, right of first refusal, option to purchase, or otherwise. A right of first refusal is created when:

(i) A manufacturer has a contractual right of first refusal to acquire the new motor vehicle dealer’s assets where the dealer owner receives consideration, terms, and conditions that are either the same as or better than those they have already contracted to receive under the proposed change of more than fifty percent of the dealers’ ownership.

(ii) The proposed change of the dealership’s ownership or the transfer of the new vehicle dealer’s assets does not involve the transfer of assets or the transfer or issuance of stock by the dealer or one of the dealer’s owners to one of the following:

(A) A designated family member of one or more of the dealer owners;

(B) A manager employed by the dealer in the dealership during the previous five years and who is otherwise qualified as a dealer operator;

(C) A partnership or corporation controlled by a designated family member of one of the dealers;

(D) A trust established or to be established:

(1) For the purpose of allowing the new vehicle dealer to continue to qualify as such under the manufacturer’s or distributor’s standards; or

(2) To provide for the succession of the franchise agreement to designated family members or qualified management in the event of death or incapacity of the dealer or its principle owner or owners.

(iii) Upon exercising the right of first refusal by a manufacturer, it eliminates any requirement under its dealer agreement or other applicable provision of this statute, that the manufacturer evaluate, process or respond to the underlying proposed
transfer by approving or rejecting the proposal, is not subject to
challenge as a rejection or denial of the proposed transfer by
any party.

(iv) Except as otherwise provided in this subsection, the
manufacturer or distributor agrees to pay the reasonable
expenses, including reasonable attorney’s fees that are incurred
by the proposed owner or transferee before the manufacturer’s
or distributor’s exercise of its right of first refusal. Payment of
the expenses and attorney’s fees are not required if the dealer
fails to submit an accounting of those expenses and fees within
twenty days of the dealer’s receipt of the manufacturer’s or
distributor’s written request for such an accounting. Such a
written account of fees and expenses may be requested by a
manufacturer or distributor before exercising its right of first
refusal;

(r) Except for experimental low-volume not-for-retail sale
vehicles, cause warranty and recall repair work to be performed
by any entity other than a new motor vehicle dealer;

(s) Make any material change in any franchise agreement
without giving the new motor vehicle dealer written notice by
certified mail of the change at least sixty days prior to the
effective date of the change;

(t) Fail to reimburse a new motor vehicle dealer, at the
dealers regular rate, or the full and actual cost of providing a
loaner vehicle to any customer who is having a vehicle serviced
at the dealership if the provision of the loaner vehicle is
required by the manufacturer; and

(u) Compel a new motor vehicle dealer through its finance
subsidiaries to agree to unreasonable operating requirements or
to directly or indirectly terminate a franchise through the
actions of a finance subsidiary of the franchisor. This subsec-
tion does not limit the right of a finance subsidiary to engage in
business practices in accordance with the usage of trade in retail 
or wholesale vehicle financing.

(3) A manufacturer or distributor, either directly or through 
any subsidiary, may not terminate, cancel, fail to renew or 
discontinue any lease of the new motor vehicle dealer’s 
established place of business except for a material breach of the 
lease.

(4) Except as may otherwise be provided in this article, no 
manufacturer or franchisor shall sell, directly or indirectly, any 
new motor vehicle to a consumer in this state, except through 
a new motor vehicle dealer holding a franchise for the line-
make covering such new motor vehicle. This subsection shall 
not apply to manufacturer or franchisor sales of new motor 
vehicles to charitable organizations, qualified vendors or 
employees of the manufacturer or franchisor.

(5) Except when prevented by an act of God, labor strike, 
transportation disruption outside the control of the manufacturer 
or time of war, a manufacturer or distributor may not refuse or 
fail to deliver, in reasonable quantities and within a reasonable 
time, to a dealer having a franchise agreement for the retail sale 
of any motor vehicle sold or distributed by the manufacturer, 
any new motor vehicle or parts or accessories to new motor 
vehicles as are covered by the franchise if the vehicles, parts 
and accessories are publicly advertised as being available for 
delivery or are actually being delivered. All models offered for 
sale by the manufacturer, without any enrollment, surcharge or 
acquisition fee, shall be available to the franchised dealer at no 
additional cost for that particular model of vehicle.

§17A-6A-11. Where motor vehicle dealer deceased or incapacitated.

1 (1) Any designated family member of a deceased or 
incapacitated new motor vehicle dealer may succeed the dealer
in the ownership or operation of the dealership under the
existing dealer agreement if the designated family member
gives the manufacturer or distributor written notice of his or her
intention to succeed to the dealership within one hundred
twenty days after the dealer’s death or incapacity, agrees to be
bound by all of the terms and conditions of the dealer agree-
ment, and the designated family member meets the current
criteria generally applied by the manufacturer or distributor in
qualifying new motor vehicle dealers. A manufacturer or
distributor may refuse to honor the existing dealer agreement
with the designated family member only for good cause. In
determining whether good cause exists for refusing to honor the
agreement, the manufacturer or distributor has the burden of
proving that the designated successor is a person who is not of
good moral character or does not meet the manufacturer’s
existing written, reasonable and uniformly applied standards for
business experience and financial qualifications.

(2) The manufacturer or distributor may request from a
designated family member such personal and financial data as
is reasonably necessary to determine whether the existing dealer
agreement should be honored. The designated family member
shall supply the personal and financial data promptly upon the
request.

(3) If a manufacturer or distributor believes that good cause
exists for refusing to honor the succession, the manufacturer or
distributor may, within forty-five days after receipt of the notice
of the designated family member’s intent to succeed the dealer
in the ownership and operation of the dealership, or within
forty-five days after the receipt of the requested personal and
financial data, serve upon the designated family member notice
of its refusal to approve the succession.

(4) The notice of the manufacturer or distributor provided
in subsection (3) above shall state the specific grounds for the
refusal to approve the succession and that discontinuance of the
agreement shall take effect not less than ninety days after the date the notice is served.

(5) If notice of refusal is not served within the sixty days provided for in subsection (3) of this section, the dealer agreement continues in effect and is subject to termination only as otherwise permitted by this article.

(6) This section does not preclude a new motor vehicle dealer from designating any person as his or her successor by will or any other written instrument filed with the manufacturer or distributor, and if such an instrument is filed, it alone determines the succession rights to the management and operation of the dealership.

§17A-6A-12. Relocation.

(1) As used in this section, “relocate” and “relocation” do not include the relocation of a new motor vehicle dealer within two miles of its established place of business. The relocation of a new motor vehicle dealer to a site within the area of sales responsibility assigned to that dealer by the manufacturing branch or distributor may not be within six air miles of another dealer of the same line-make.

(2) Before a manufacturer or distributor enters into a dealer agreement establishing or relocating a new motor vehicle dealer within a relevant market area where the same line-make is represented, the manufacturer or distributor shall give written notice to each new motor vehicle dealer of the same line-make in the relevant market area of its intention to establish an additional dealer or to relocate an existing dealer within that relevant market area.

(3) Within sixty days after receiving the notice provided for in subsection (2) above, or within sixty days after the end of any appeal procedure provided by the manufacturer or distributor, a new motor vehicle dealer of the same line-make within the affected relative market area may bring a declaratory
judgment action in the circuit court for the county in which the
new motor vehicle dealer is located to determine whether good
cause exists for the establishing or relocating of a proposed new
motor vehicle dealer. Once an action has been filed, the
manufacturer or distributor may not establish or relocate the
proposed new motor vehicle dealer until the circuit court has
rendered a decision on the matter. An action brought pursuant
to this section shall be given precedence over all other civil
matters on the court's docket. The manufacturer has the burden
of proving that good cause exists for establishing or relocating
a proposed new motor vehicle dealer.

(4) This section does not apply to the reopening in a
relevant market area of a new motor vehicle dealer that has
been closed within the preceding two years if the established
place of business of the new motor vehicle dealer is within two
miles of the established place of business of the closed new
motor vehicle dealer.

(5) In determining whether good cause exists for establish-
ing or relocating an additional new motor vehicle dealer for the
same line-make, the court shall take into consideration the
existing circumstances, including, but not limited to, the
following:

(a) Permanency and amount of the investment, including
any obligations incurred by the dealer in making the invest-
ment;

(b) Effect on the retail new motor vehicle business and the
consuming public in the relevant market area;

(c) Whether it is injurious or beneficial to the public
welfare;

(d) Whether the new motor vehicle dealers of the same line-
make in the relevant market area are providing adequate
competition and convenient consumer care for the motor
vehicles of that line-make in the market area, including the
adequacy of motor vehicle sales and qualified service personnel;

(e) Whether the establishment or relocation of the new motor vehicle dealer would promote competition;

(f) Growth or decline of the population and the number of new motor vehicle registrations in the relevant market area; and

(g) The effect on the relocating dealer of a denial of its relocation into the relevant market area.


(1) Each new motor vehicle manufacturer or distributor shall specify in writing to each of its new motor vehicle dealers licensed in this state the dealer's obligations for preparation, delivery and warranty service on its products. The manufacturer or distributor shall compensate the new motor vehicle dealer for warranty service required of the dealer by the manufacturer or distributor. The manufacturer or distributor shall provide the new motor vehicle dealer with the schedule of compensation to be paid to the dealer for parts, work and service, and the time allowance for the performance of the work and service.

(2) The schedule of compensation shall include reasonable compensation for diagnostic work, as well as repair service and labor. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed. In the determination of what constitutes reasonable compensation under this section, the principal factor to be given consideration shall be the prevailing wage rates being paid by dealers in the community in which the dealer is doing business, and in no event may the compensation of a dealer for warranty labor and parts be less than the rates charged by the dealer for like service to retail customers for nonwarranty service and repairs, provided that the rates are reasonable. However, in the case of a new motor vehicle dealer of motorcycles or recreational vehicles, in no event may the
25 compensation of a dealer for warranty parts be less than the
26 dealer’s cost of acquiring the part plus twenty percent.

27 (3) A manufacturer or distributor may not do any of the
28 following:

29 (a) Fail to perform any warranty obligation;

30 (b) Fail to include in written notices of factory recalls to
31 new motor vehicle owners and dealers the expected date by
32 which necessary parts and equipment will be available to
33 dealers for the correction of the defects; or

34 (c) Fail to compensate any of the new motor vehicle dealers
35 licensed in this state for repairs effected by the recall.

36 (4) All claims made by a new motor vehicle dealer pursuant
37 to this section for labor and parts shall be paid within thirty
38 days after their approval. All claims shall be either approved or
39 disapproved by the manufacturer or distributor within thirty
40 days after their receipt on a proper form generally used by the
41 manufacturer or distributor and containing the usually required
42 information therein. Any claim not specifically disapproved in
43 writing within thirty days after the receipt of the form is
44 considered to be approved and payment shall be made within
45 thirty days. The manufacturer has the right to initiate an audit
46 of a claim within twelve months after payment and to charge
47 back to the new motor vehicle dealer the amount of any false,
48 fraudulent or unsubstantiated claim, subject to the requirements
49 of section eight-a of this article.

50 (5) The manufacturer shall accept the return of any new and
51 unused part, component or accessory that was ordered by the
52 dealer, and shall reimburse the dealer for the full cost charged
53 to the dealer for the part, component or accessory if the dealer
54 returns the part and makes a claim for the return of the part
55 within one year of the dealer’s receipt of the part, component or
56 accessory and provides reasonable documentation, to include
any changed part numbers to match new part numbers, provided that the part was ordered for a warranty repair.

§17A-6A-14. Acceptance of vehicles; risk of loss or damage.

(1) Notwithstanding the terms, provisions or conditions of any agreement, a new motor vehicle dealer is solely liable for damages to new motor vehicles after acceptance from the carrier, after a three-day period for proper inspection of the vehicle and before delivery to the ultimate purchaser. Acceptance by the new motor vehicle dealer shall occur when the new motor vehicle dealer signs a delivery receipt for any motor vehicle.

(2) Notwithstanding the terms, provisions or conditions of any agreement, the manufacturer or distributor is liable for all damages or repairs to motor vehicles before delivery to a carrier or transporter and shall indemnify the new motor vehicle dealer for any such damages or repairs.

(3) The new motor vehicle dealer is liable for damages to new motor vehicles after delivery to the carrier only if the dealer selects the method of transportation, mode of transportation and the carrier. In all other instances, the manufacturer or distributor is liable for new motor vehicle damage.

(4) If the new motor vehicle dealer rejects a new motor vehicle pursuant to this section, the manufacturer or distributor shall credit the dealer’s account within ten business days after receipt of the notice of rejection.

§17A-6A-16. Actions at law; damages.

(1) If a manufacturer or distributor terminates, cancels, fails to renew or discontinues a dealer agreement for other than good cause as defined in this article, or commits any other violation of this article, the new motor vehicle dealer adversely affected by the actions may bring an action for damages and equitable relief against the manufacturer or distributor. If the new motor vehicle dealer prevails, the dealer may recover, in addition to
actual damages, treble damages up to three times the amount of
the actual damages awarded, plus reasonable attorney’s fees,
regardless of the amount in controversy. For the purposes of the
award of attorney’s fees and costs, whenever the new motor
dealer is seeking injunctive or other relief, the dealer
may be considered to have prevailed when a judgment or other
final order providing equitable relief is entered in its favor.

(2) A manufacturer or distributor who violates this article
is liable for all damages sustained by a new motor vehicle
dealer as a result of the violation.

(3) A manufacturer or distributor or new motor vehicle
dealer may bring an action for declaratory judgment for
determination of any controversy arising pursuant to this article.

(4) Any corporation or association which is primarily
owned by or composed of dealers and which primarily repre-
sents the interests of dealers has standing to file a petition or
cause of action with the court of competent jurisdiction for
itself or by, for or on behalf of any, or a group of, new motor
vehicle dealers for any violation of this article or for the
determination of any rights created by this article.

(5) In addition to any county in which venue is proper in
accordance with the constitution and laws of this state, in any
cause of action brought by a new motor vehicle dealer against
a manufacturer or distributor for any violation of this article or
for the determination of any rights created by the dealer’s
franchise agreement, venue is proper in the county in which the
dealer is engaged in the business of selling the products or
services of the manufacturer or distributor.

§17A-6A-18. West Virginia law to apply.

Notwithstanding the terms, provisions or requirements of
any franchise agreement, contract or other agreement of any
kind between a new motor vehicle dealer and a manufacturer or
distributor or any subsidiary, affiliate or partner of a manufac-
CHAPTER 181

(H. B. 4555 — By Delegate Warner)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article seven, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to including those in the business of repossessing motor vehicles among the entities eligible for one-trip registration permits.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. SPECIAL STICKERS.

§17A-7-1. Operation of vehicles by financial institution or wrecker under special stickers; application and fees; expiration.

1 The commissioner may upon application issue to a banking institution, insurance company, entity in the business of repossessing motor vehicles, finance company, or other type of lending or financial institution, or a person engaged exclusively in wrecking or dismantling vehicles, a paper sticker or decal to be affixed to the left side of the rear window of a motor vehicle or at a place on any other type vehicle as designated by the commissioner. The sticker or decal shall be of a size to be
designated by the commissioner and shall be serially numbered
and shall have provision thereon to indicate the date of issu-
ance. The division shall charge a fee of one dollar per sticker.
The sticker or decal shall be valid for the operation of a vehicle,
whether under its own power or while being towed, one time
only over the streets or highways of this state, and upon being
once affixed to a vehicle shall become invalid for subsequent
use on that or any other vehicle. The commissioner may
require, as a condition for the issuance of the permit, insurance
as he or she determines appropriate.

CHAPTER 182

(S. B. 558 — By Senators Craigo, Unger, Walker, Minard and Mitchell)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter
seventeen-b of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to driver’s licenses; and
requiring color coding of licenses according to age of driver and
authorizing endorsement of appropriate graduated driver license
level.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-1. Drivers must be licensed; types of licenses; licensees
need not obtain local government license; motorcycle driver license; identification cards.

*Clerk’s Note: This section was also amended by H. B. 4324 (Chapter 126), which passed prior to this act.
(a) No person, except those hereinafter expressly exempted, may drive any motor vehicle upon a street or highway in this state or upon any subdivision street, as used in article twenty-four, chapter eight of this code, when the use of the subdivision street is generally used by the public unless the person has a valid driver’s license under the provisions of this code for the type or class of vehicle being driven.

Any person licensed to operate a motor vehicle as provided in this code may exercise the privilege thereby granted as provided in this code and, except as otherwise provided by law, shall not be required to obtain any other license to exercise the privilege by any county, municipality or local board or body having authority to adopt local police regulations.

(b) The division, upon issuing a driver’s license, shall indicate on the license the type or general class or classes of vehicle or vehicles the licensee may operate in accordance with the provisions of this code, federal law or rule. Licenses shall be issued in different colors for those drivers under age eighteen, those drivers age eighteen to twenty-one, and adult drivers. The commissioner is authorized to select and assign colors to the licenses of the various age groups. The commissioner shall implement color-coded licenses on or before the first day of January, two thousand one.

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

(1) Class A, B or C license shall be issued to those persons eighteen years of age or older with two years driving experience and who have qualified for the commercial driver’s license established by chapter seventeen-e of this code and the federal Commercial Motor Vehicle Safety Act of 1986, Title XII of public law 99-570 and subsequent rules, and have paid the required fee.

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

(3) Class E license shall be issued to those persons who have qualified under the provisions of this chapter and who are not required to obtain a Class A, B, C or D license and who have paid the required fee. The Class E license may be endorsed under the provisions of section seven-b of this article for motorcycle operation. The Class E license for any person under the age of eighteen may also be endorsed with the appropriate graduated driver license level in accordance with the provisions of section three-a of this article.

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

(5) All licenses issued under this section may contain information designating the licensee as a diabetic, if the licensee requests this information on the license.

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

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

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

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

(C) Has reached the age of two years. The division may also issue a nondriver identification card to a person under the age of two years for good cause shown;

(D) Has paid the required fee of two dollars and fifty cents per year for each year the identification card is issued to be valid: Provided, That the fee is not required if the applicant is sixty-five years or older or is legally blind; and

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

(2) The nondriver identification card shall contain the same information as a driver’s license except that the identification card shall be clearly marked as identification card. However, the division may issue an identification card with less information to persons under the age of sixteen. It may be renewed on application and payment of the fee required by this section.

(A) Every identification card issued to persons who have attained their twenty-first birthday shall expire on the day of the month designated by the commissioner in which the applicant’s birthday occurs in those years in which the applicant’s age is evenly divisible by five. Except as provided in paragraph (B) of
this subdivision, no identification card may be issued for less than three years nor more than seven years and shall be valid for a period of five years expiring in the month in which the applicant’s birthday occurs and in a year in which the applicant’s age is evenly divisible by five.

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

(C) Every identification card issued to persons under the age of sixteen shall expire on the day of the month designated by the commissioner in which the applicant’s birthday occurs and shall be issued for a period of two years.

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

(f) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars; and upon a second or subsequent conviction, shall be fined not more than five hundred dollars, or confined in the county or regional jail not more than six months, or both.

CHAPTER 183

(Com. Sub. for H. B. 4389 — By Delegate Warner)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five-a, article two, chapter seventeen-b of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to requiring applicants for employment as license examiners with department of motor vehicles to submit to a criminal background check.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-5a. Training, certification and monitoring of license examiners.

1 (a) The commissioner shall train, certify and monitor those employees of the division of motor vehicles designated by the commissioner as license examiners regarding the administration of licensing application and testing procedures for the purpose of ensuring compliance with statutory and regulatory require-
ments.

(b) In order to determine an applicant’s suitability for employment, the commissioner shall require every applicant for a license examiner position to furnish a full set of fingerprints to facilitate a criminal background check of the applicant. The commissioner shall submit the fingerprints to the state criminal identification bureau along with the applicant’s identifying information. Prior to hiring a prospective applicant the commis-

sioner shall request that the state police submit the fingerprints and identifying information to the federal bureau of investiga-
tion for a national criminal history record check and that the commissioner may not hire the prospective applicant until the results of the national background check are available for evaluation.
CHAPTER 184
(Com. Sub. for H. B. 4125 — By Delegate Warner)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article five-a, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to deleting the present language regarding payment of enrollment fees and substituting a method for collecting and remitting the fees.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION AND REVOCATION OF LICENSES FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL, CONTROLLED SUBSTANCES OR DRUGS.

§17C-5A-3. Safety and treatment program; reissuance of license.

(a) The division of motor vehicles, in cooperation with the department of health and human resources, the division of alcoholism and drug abuse, shall propose a legislative rule or rules for promulgation in accordance with the provisions of chapter twenty-nine-a of this code, establishing a comprehensive safety and treatment program for persons whose licenses have been revoked under the provisions of this article, or section seven, article five of this chapter, or subsection (6), section five, article three, chapter seventeen-b of this code, and shall likewise establish the minimum qualifications for mental health facilities or other public agencies or private entities
conducting the safety and treatment program: Provided, That the commissioner may establish standards whereby the division will accept or approve participation by violators in another treatment program which provides the same or substantially similar benefits as the safety and treatment program established pursuant to this section. The program shall include, but not be limited to, treatment of alcoholism, alcohol and drug abuse, psychological counseling, educational courses on the dangers of alcohol and drugs as they relate to driving, defensive driving, or other safety driving instruction, and other programs designed to properly educate, train and rehabilitate the offender.

(b) (1) The division of motor vehicles, in cooperation with the department of health and human resources, the division of alcoholism and drug abuse, shall provide for the preparation of an educational and treatment program for each person whose license has been revoked under the provisions of this article or section seven, article five of this chapter, or subsection (6), section five, article three, chapter seventeen-b of this code, which shall contain the following: (A) A listing and evaluation of the offender's prior traffic record; (B) characteristics and history of alcohol or drug use, if any; (C) his or her amenability to rehabilitation through the alcohol safety program; and (D) a recommendation as to treatment or rehabilitation, and the terms and conditions of the treatment or rehabilitation. The program shall be prepared by persons knowledgeable in the diagnosis of alcohol or drug abuse and treatment. The cost of the program shall be paid out of fees established by the commissioner of motor vehicles in cooperation with the department of health and human resources, division of alcohol and drug abuse. The program provider shall collect the established fee from each participant upon enrollment. The program provider shall also at the time of enrollment remit to the commissioner a portion of the collected fee established by the commissioner in cooperation with the department of health and human resources, which shall be deposited into an account designated the driver's
rehabilitation fund, which was created by a prior enactment of this section and which is hereby continued, to be used for the administration of the program.

(2) The commissioner, after giving due consideration to the program developed for the offender, shall prescribe the necessary terms and conditions for the reissuance of the license to operate a motor vehicle in this state revoked under this article, or section seven, article five of this chapter, or subsection (6), section five, article three, chapter seventeen-b of this code, which shall include successful completion of the educational, treatment or rehabilitation program, subject to the following:

(A) When the period of revocation is six months, the license to operate a motor vehicle in this state shall not be reissued until (i) at least ninety days have elapsed from the date of the initial revocation, during which time the revocation was actually in effect, (ii) the offender has successfully completed the program, (iii) all costs of the program and administration have been paid, and (iv) all costs assessed as a result of a revocation hearing have been paid.

(B) When the period of revocation is for a period of years, the license to operate a motor vehicle in this state shall not be reissued until (i) at least one half of such time period has elapsed from the date of the initial revocation, during which time the revocation was actually in effect, (ii) the offender has successfully completed the program, (iii) all costs of the program and administration have been paid, and (iv) all costs assessed as a result of a revocation hearing have been paid.

(C) When the period of revocation is for life, the license to operate a motor vehicle in this state shall not be reissued until (i) at least ten years have elapsed from the date of the initial revocation, during which time the revocation was actually in effect, (ii) the offender has successfully completed the program, (iii) all costs of the program and administration have been paid,
and (iv) all costs assessed as a result of a revocation hearing have been paid.

(D) Notwithstanding any provision of this code or any rule, any mental health facilities or other public agencies or private entities conducting the safety and treatment program when certifying that a person has successfully completed a safety and treatment program, shall only have to certify that such person has successfully completed the program.

(c) (1) The division of motor vehicles, in cooperation with the department of health and human resources, division of alcoholism and drug abuse, shall provide for the preparation of an educational program for each person whose license has been suspended for sixty days pursuant to the provisions of subsection (1), section two, article five-a of this chapter. The educational program shall consist of not less than twelve nor more than eighteen hours of actual classroom time.

(2) When a sixty-day period of suspension has been ordered, the license to operate a motor vehicle shall not be reinstated until (A) at least sixty days have elapsed from the date of the initial suspension, during which time the suspension was actually in effect, (B) the offender has successfully completed the educational program, (C) all costs of the program and administration have been paid, and (D) all costs assessed as a result of a suspension hearing have been paid.

(d) A required component of the rehabilitation program provided for in subsection (b) and the education program provided for in subsection (c) shall be participation by the violator with a victim impact panel program providing a forum for victims of alcohol and drug related offenses and offenders to share first-hand experiences on the impact of alcohol and drug related offenses in their lives. The commissioner shall propose legislative rules for promulgation in accordance with the provisions of chapter twenty-nine-a of this code to imple-
ment victim impact panels where appropriate numbers of
victims are available and willing to participate, and shall
establish guidelines for other innovative programs which may
be substituted where such victims are not available, so as to
assist persons whose licenses have been suspended or revoked
for alcohol and drug related offenses to gain a full understand-
ing of the severity of their offenses in terms of the impact of
such offenses on victims and offenders. The legislative rules
proposed for promulgation by the commissioner shall require,
at a minimum, discussion and consideration of the following:

(A) Economic losses suffered by victims or offenders;
(B) Death or physical injuries suffered by victims or
offenders;
(C) Psychological injuries suffered by victims or offenders;
(D) Changes in the personal welfare or familial relation-
ships of victims or offenders; and
(E) Other information relating to the impact of alcohol and
drug related offenses upon victims or offenders.

Any rules promulgated pursuant to this subsection shall
contain provisions which ensure that any meetings between
victims and offenders shall be nonconfrontational and ensure
the physical safety of the persons involved.

CHAPTER 185
(Com. Sub. for S. B. 551 — By Senator Hunter)

[Passed March 11, 2000; in effect from passage. Approved by the Governor.]
chapter those motor vehicles designated by the bureau of senior services for use by local county aging programs; and providing that those motor vehicles and the operators follow commission safety rules.”

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. PURPOSES, DEFINITIONS AND EXEMPTIONS.

§24A-1-3. Exemptions from chapter.

The provisions of this chapter, except where specifically otherwise provided, do not apply to:

(1) Motor vehicles operated exclusively in the transportation of United States mail or in the transportation of newspapers: Provided, That the vehicles and their operators shall be subject to the safety rules promulgated by the commission;

(2) Motor vehicles owned and operated by the United States of America, the state of West Virginia or any county, municipality or county board of education, urban mass transportation authority established and maintained pursuant to article twenty-seven, chapter eight of this code, or by any department thereof, and any motor vehicles operated under a contract with a county board of education exclusively for the transportation of children to and from school or other legitimate transportation for the schools as the commission may specifically authorize;

(3) Motor vehicles used exclusively in the transportation of agricultural or horticultural products, livestock, poultry and dairy products from the farm or orchard on which they are raised or produced to markets, processing plants, packing houses, canneries, railway shipping points and cold storage plants, and in the transportation of agricultural or horticultural supplies to farms or orchards to be used thereon;
(4) Motor vehicles used exclusively in the transportation of human or animal excreta;

(5) Motor vehicles used exclusively in ambulance service or duly chartered rescue squad service;

(6) Motor vehicles used exclusively for volunteer fire department service;

(7) Motor vehicles used exclusively in the transportation of coal from mining operations to loading facilities for further shipment by rail or water carriers: Provided, That the vehicles and their operators shall be subject to the safety rules promulgated by the commission;

(8) Motor vehicles used by petroleum commission agents and oil distributors solely for the transportation of petroleum products and related automotive products when the transportation is incidental to the business of selling the products: Provided, That the vehicles and their operators shall be subject to the safety rules promulgated by the commission;

(9) Motor vehicles owned, leased by or leased to any person and used exclusively for the transportation of processed source-separated recycled materials, generated by commercial, institutional and industrial customers, transported free of charge from the customers to a facility for further processing: Provided, That the vehicles and their operators shall be subject to the safety rules promulgated by the commission;

(10) Motor vehicles specifically preempted from state economic regulation of intrastate motor carrier operations by the provisions of the federal aviation administration authorization act of 1994 (Pub. L. 103-305 §601 108 Stat. 1605 (1994)): Provided, That the vehicles and their operators shall be subject to the safety rules promulgated by the commission; and

(11) Motor vehicles designated by the West Virginia bureau of senior services for use and operation by local county aging programs: Provided, That the vehicles and their operators shall be subject to the safety rules promulgated by the commission.
AN ACT to amend and reenact section three, article one-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to excepting Kanawha state forest from among the forests under the supervision and jurisdiction of the division of forestry; and providing for the management of same by the division of natural resources.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1A. DIVISION OF FORESTRY.

§19-1A-3. Division of forestry; division director; duties, powers, dedication of certain moneys; creation of a special revenue account.

1 The division of forestry heretofore created is hereby continued. And, except as otherwise provided in this article, all powers and duties previously exercised by the director of natural resources under subsection (13), section seven, article one and article three, chapter twenty of this code, except those powers and duties relating solely to wildlife areas as described in section three, article three, chapter twenty of this code, heretofore transferred to the division of forestry, are hereby continued in the division of forestry, except Kanawha state forest as hereinafter provided. The division of forestry has within its jurisdiction and supervision the state forests, other
forests and woodland areas, the protection of forest areas from injury and damage by fire, disease, insects and other pestilences and forces, the management of forest areas for natural resources, conservation and undeveloped recreational activities, administration of the southeastern interstate forest fire protection compact and other compacts and agreements relating to forest management and husbandry, and the administration and enforcement of laws relating to the conservation, development, protection, use and enjoyment of all forest land areas of the state consistent with the provisions of sections one and two of this article. All moneys collected from the sale of timber realized through management of the state-owned forests and the sale of seedlings from the tree nurseries shall be paid into the state treasury and shall be credited to a special account within the division of forestry and used exclusively for the purposes of this article and article three, chapter twenty of this code.

The division of forestry has jurisdiction to regulate the digging, possession and sale of native, wild or cultivated ginseng as provided in section three-a, article one-a, chapter nineteen of this code.

The chief of the division is the director of the division of forestry who shall be appointed and qualified as provided in section five of this article.

The director of the division of forestry shall study means and methods of implementing the provisions of section fifty-three, article VI of the constitution of West Virginia, relating to forest lands, and shall prepare and recommend legislation thereon.

The division lines within the state forests between improved recreation areas under the management of the division of natural resources and the demonstration forests under the management of the division of forestry, heretofore established by agreement, are hereby continued with the exception of Kanawha state forest where the entire forest will be managed by and under the jurisdiction of the division of natural resources.
for multiple uses and the division of natural resources shall
continue to provide recreational opportunities, including, but
not limited to, mountain-biking trails, hiking trails, horseback
riding trails and hunting, fishing and trapping lands. The forest
may not be designated as a state park or state recreation area;
however, any sale of timber from Kanawha state forest shall
continue to be prohibited.

In the event of disagreement over the placement of a
division line or dual occupancy of a building, the disposition
shall be decided by the Legislature's joint committee on
government and finance at a regularly scheduled meeting.

CHAPTER 187
(S. B. 132 — By Senators Dittmar, Minard, Hunter,
Anderson, Dawson, Ross, Craigo, Bowman,
Mitchell, Kessler, Bait and Sharpe)

[Passed March 10, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-six-b, article two,
chapter twenty of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to wildlife resources;
Class N special deer hunting license; and eliminating requirement
that resident parents possess a license when hunting on the land
of resident children.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.
§20-2-46b. Class N special deer hunting license.
A Class N license is a special deer hunting license for antlerless deer of either sex and entitles the licensee to hunt for and kill antlerless deer of either sex during the Class N license season. The fee for a Class N license is eight dollars.

The Class N license may be issued only for the purpose of removing antlerless deer when the director determines it essential for proper management of wildlife resources. The director shall establish rules governing the issuance of the Class N licenses as he or she determines necessary to limit, on a fair and equitable basis, the number of persons who may hunt for antlerless deer in any county, or any part of a county.

When the director determines it essential that Class N license season be held in a particular county or part of a county, that season shall be set by the natural resources commission as provided for in section seventeen, article one of this chapter.

Bona fide resident landowners or their resident children, or resident parents, bona fide resident tenants of such land and any bona fide resident stockholder of resident corporations which are formed for the primary purpose of hunting or fishing and which are the fee simple owners of no less than one thousand acres of land upon which the antlerless deer may be hunted are not required to have a Class N license in their possession while hunting antlerless deer on their own land during the Class N license season.

A Class N license may be issued only to a resident of this state who holds a valid Class A, Class A-L, Class AB, Class AB-L, Class X or Class XJ license issued for the current calendar year or a resident of West Virginia who is not required to obtain a license or permit to hunt as provided in section twenty-eight, article two of this chapter, except that this requirement shall not apply to persons under the age of fifteen. The director shall require proof of age before issuing a Class N license, and the license shall contain a space for recording the number of the valid Class A, Class A-L, Class AB, Class AB-L,
35 Class X or Class XJ license. If at any time prior to the Class N
deer hunting season the director determines that there is a
surplus of Class N licenses after the demand for the licenses by
residents of this state has been met, the surplus licenses may be
issued to nonresidents who hold a valid Class E hunting license.
The fee for a Class N license issued to a nonresident shall be
twenty-five dollars.

CHAPTER 188

(H. B. 4132 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article five, chapter
twenty of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to the division of natural re-
sources; construction of recreational facilities at certain state
parks; authorizing contracts with third parties for construction of
cabins at any state park or forest; providing that title to the cabins
immediately vests in the state and are to be operated by the parks
and recreation section; and promulgation of emergency and
legislative rules.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. PARKS AND RECREATION.

§20-5-16. Authority to enter into contracts with third parties to
construct recreational facilities and cabins; public
comment.
(a) Notwithstanding any other provision of this code to the contrary, in addition to all other powers and authority vested in the director, he or she is hereby authorized and empowered to:

(1) Enter into contracts with third parties for the construction and operation of recreational facilities at Chief Logan State Park, Beech Fork State Park, Tomlinson Run State Park, Stonewall Jackson Lake State Park and Lost River State Park. The term of the contracts may not exceed a period of twenty-five years, at which time the full title to the recreational facilities shall vest in the state;

(2) Enter into contracts with third parties for the construction, but not the operation, of cabins at any state park or forest. Upon completion of the construction of the cabins, full title to the cabins shall immediately vest in the state and the cabins shall be operated by the parks and recreation section;

(3) Authorize the construction of at least five cabins by any single third party, in state parks and state forests which do not offer such facilities on the effective date of this subsection; and

(4) Propose emergency and legislative rules, in accordance with the provisions of article three, chapter twenty-nine-a of this code, that set the conditions upon which the director may enter into a contract with a single third party proposing to construct cabins.

(b) All contracts shall be presented to the joint committee on government and finance for review and comment prior to execution.

(c) A contract may provide for renewal for the purpose of permitting continued operation of the facilities at the option of the director for a term or terms not to exceed ten years.

(d) No extension or renewal beyond the original twenty-five-year term may be executed by the director absent the approval of the joint committee on government and finance.
AN ACT to amend and reenact section six, article thirteen-j, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the neighborhood investment program; and allowing any taxpayer who makes an eligible contribution to a qualified charitable organization to claim the credit against personal income tax.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13J. NEIGHBORHOOD INVESTMENT PROGRAM.

§11-13J-6. Application of annual credit allowance.

(a) In general. — The aggregate annual credit allowance for a current tax year is an amount equal to the sum of the following:

(1) The portion allowed under section five of this article for an eligible contribution placed into service or use during a prior tax year; plus

(2) The portion allowed under section five of this article for an eligible contribution placed into service or use during the current tax year.
Application of credit allowance. — The amount determined under subsection (a) of this section shall be allowed as a credit for tax years ending on and after the first day of July, one thousand nine hundred ninety-six, as follows:

1. Business franchise taxes. —

The amount determined under subsection (a) of this section shall be applied to reduce up to fifty percent of the taxes imposed by article twenty-three of this chapter for the tax year (determined after application of the credits against tax provided in section seventeen of said article, but before application of any other allowable credits against tax).

2. Corporation net income taxes. — After application of subdivision (1) of this subsection, any unused credit shall next be applied to reduce up to fifty percent of the taxes imposed by article twenty-four of this chapter, for the tax year (determined before application of allowable credits against tax).

3. Personal income taxes. —

(A) If the eligible taxpayer is an electing small business corporation (as defined in Section 1361 of the United States Internal Revenue Code), a limited liability company treated as a partnership for purposes of the federal income tax, a partnership or a sole proprietorship, then any unused credit (after application of subdivisions (1) and (2) of this subsection) shall be allowed as a credit against up to fifty percent of the taxes imposed by article twenty-one of this chapter on income of proprietors, partners or shareholders, subject to the limitations set forth in paragraphs (B) and (C) of this subdivision.

(B) Electing small business corporations, partnerships and other unincorporated organizations shall allocate the credit allowed by this article among the members thereof in the same manner as profits and losses are allocated for the tax year.
(C) Any taxpayer subject to the personal income tax under article twenty-one of this chapter, who makes an eligible contribution to a qualified charitable organization, and receives back from that organization a properly completed neighborhood investment program tax credit voucher, is eligible to claim the credit. The credit shall be allowed without regard to the source of that income, whether it is from wages, passive investment or retirement income, income from a trade or business or any other source.

(c) Unused credit forfeited. — If any credit to an eligible taxpayer remains after application of subsections (a) and (b) of this section, the amount thereof may be carried forward no more than four years from the tax year in which the contribution was made. Unused credits of an eligible taxpayer may not be carried forward beyond the time limits imposed under section five of this article and the total maximum aggregate tax credits certified in any state fiscal year may not exceed two million dollars.

(d) Addition of deductions, decreasing adjustments or decreasing modifications taken in determining taxable income for which credit is taken. — Any deduction, decreasing adjustment or decreasing modification taken by any taxpayer in determining federal taxable income which affects West Virginia taxable income or in determining West Virginia taxable income under article twenty-one or twenty-four of this chapter for the taxable year for any charitable contribution, or payment or portion thereof, which qualifies as an eligible contribution under this article and for which credit is claimed, shall be added to West Virginia taxable income in determining the tax liability of the taxpayer under article twenty-one or twenty-four of this chapter, as appropriate, before application of the credit allowed under this article for the taxable year.

(e) Annual limit. — The aggregate annual credit allowance to any taxpayer may not exceed one hundred thousand dollars in any tax year.
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-s, relating to the establishment of the Older West Virginians Act; declaring purpose and objectives, defining terms, establishing role of bureau of senior services; establishing area agencies, establishing requirements of service providers; requiring support services, nutrition services and other services and programs; and establishing special activities.

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-s, to read as follows:

ARTICLE 5S. OLDER WEST VIRGINIANS ACT.

§16-5S-1. Short title.
§16-5S-2. Purpose and objectives.
§16-5S-4. Powers and duties of the commissioner.
§16-5S-5. Powers and duties of the bureau of senior services.
§16-5S-6. Area agencies on aging.
§16-5S-7. Local service providers.
§16-5S-8. Supportive services.
§16-5S-10. Other services.
§16-5S-11. Programs and special activities for older West Virginians.
§16-5S-1. Short title.

This article may be cited as the “Older West Virginians Act of 2000.”

§16-5S-2. Purpose and objectives.

(a) The purpose of this article is to provide guidance and assistance in the development of new or improved activities and programs to help older West Virginians maintain independence, honor and dignity, within available federal and state funds.

(b) This article establishes an array of services which are to be provided at a no cost or at a reasonable cost for senior citizens: Provided, That nothing in this article may be construed to require the provision of any service by the bureau. The service packages shall be prioritized first to in-home, community based clients to enable them to remain independent for as long as possible in local settings. Second level priority services shall be those which are preventive and supportive in nature.

(c) Management practice shall integrate programs with service providers and service options through a statewide delivery system.

(d) Programs shall recognize the strengths of the older population, especially in the areas of volunteerism and leadership, to improve the status of all older individuals in West Virginia.


For the purpose of this article:

(a) “Aging network” means the network of the bureau of senior services, area agencies on aging, and local providers of direct services to older individuals;

(b) “Bureau” refers to the bureau of senior services;
(c) "Commissioner" refers to the commissioner of the bureau of senior services;

(d) "Focal point" means a facility established to encourage the maximum collocation and coordination of services for older individuals;

(e) "Older individual" or "older West Virginian" or "senior" or "senior citizen" means an individual who is sixty years of age or older;

(f) "State agency" refers to the bureau of senior services.

§16-5S-4. Powers and duties of the commissioner.

For purposes of this article, the commissioner shall have the powers and duties set forth in section six, article five-p of this chapter. In addition, the commissioner shall ensure the bureau fulfills the requirements of section twelve, article five-p of this chapter, relating to federal government programs.

§16-5S-5. Powers and duties of the bureau of senior services.

The bureau shall be the designated state agency to:

(a) Develop and administer the state plan as required by the federal administration on aging;

(b) Be the primary agency responsible for the planning, policy development, administration, coordination, priority setting and evaluation of activities related to this article;

(c) Serve as an effective and visible advocate for older West Virginians;

(d) Divide the state into distinct planning and service areas and designate for each area a public or private nonprofit agency or organization as the area agency on aging as required by the federal administration on aging;
(e) Provide technical assistance and information to area agencies on aging and local service providers as appropriate and conduct monitoring of area agencies on aging to ensure compliance with applicable rules, regulations and standards;

(f) Maintain client and service data using a standardized computer client tracking system through which all providers shall report required information;

(g) Maintain letters of agreement with the state department of health and human resources to provide program operations of the personal care and aged and disabled waiver programs;

(h) Maintain a registry of companies and organizations that provide free medications or provide assistance to persons in securing medications, and make this information available to consumers through all local senior programs.

§16-5S-6. Area agencies on aging.

The area agencies on aging designated by the bureau shall be charged with the following:

(a) Prepare and develop an area plan in a format provided by the bureau and as required by the federal administration on aging;

(b) Enter into agreements and contracts with local service providers for the provision of supportive services and nutrition services funded through the federal administration on aging;

(c) Designate, where feasible, a focal point for service delivery in each community;

(d) Establish an advisory council in accordance with the requirements of the federal administration on aging;
(e) Serve as an effective and visible advocate for older West Virginians; and

(f) Provide appropriate technical assistance and information to local service providers and conduct monitoring of local service providers to ensure compliance with applicable rules, regulations and standards.

§16-5S-7. Local service providers.

(a) Service providers who offer “Older West Virginians Act” and related services funded through the federal administration on aging shall:

1. Determine the needs of seniors in the particular geographic area covered by gaining input from the seniors themselves, their families and care givers;

2. Develop a plan of service based on the needs of the seniors in a format provided by the area agency;

3. Provide supportive services, nutrition services and senior centers which shall, within available funding, meet the identified needs of seniors;

4. Serve as an effective and visible advocate for older West Virginians; and

5. Participate in the bureau’s client tracking system.

(b) Service providers who offer medicaid reimbursed services shall:

1. Comply with appropriate medicaid regulations and policies including provider agreements, program manuals and program instructions;

2. Maintain client files, provider information and report as required for the determination of compliance with established program standards as determined by the bureau for medical services; and

3. Participate in the bureau’s client tracking system.
§16-5S-8. Supportive services.

Supportive services funded through the federal administration on aging for older West Virginians may include, but are not limited to: Adult day care, assessment, assisted transportation, care training, chore, counseling, discount, home repair, housing assistance, information and assistance, instruction/training, legal assistance, letter/writing, reading, material aid, nutrition education, outreach, telephoning, transportation and visiting, all as defined by the bureau and the federal administration on aging.


All congregate meals and home delivered meals shall contain one third of the recommended daily allowance for vitamins and minerals. Congregate meal sites may include senior centers, community buildings, schools, churches and elderly housing complexes. Home delivered meals are to be delivered to eligible individuals, in accordance with guidelines and standards established by the bureau and the federal administration on aging.

§16-5S-10. Other services.

The bureau shall also coordinate and provide older West Virginians the following:

(a) In-home services for those who are frail or at risk of becoming institutionalized; and

(b) Disease prevention and health screening services.

§16-5S-11. Programs and special activities for older West Virginians.

(a) The bureau shall continue and maintain its long-term care ombudsman program codified in article five-I, chapter sixteen of this code. The bureau shall also design and imple-
ment programs for the benefit of older West Virginians relating to: Elder abuse, neglect and exploitation; elder rights and legal assistance; in-home personal care for medicaid and non-medicaid eligible senior citizens; direct services established by the legislative initiatives for the elderly (LIFE), senior health insurance network as established by the United States health care financing administration and a foster grandparent program as established by the corporation for national and community service.

(b) The bureau may sponsor the following special activities for older West Virginians: Governor's golden mountaineer program, a discount program for goods and services at participating merchants, an annual senior citizens conference providing educational and entertainment opportunities, a governor's summit on aging, a silver haired legislature and an annual senior day at the Legislature. The bureau may sponsor additional special activities as necessary.

CHAPTER 191

(Com. Sub. for S. B. 167 — By Senators Bowman, Kessler, McKenzie, Edgell, Dittmar, Dawson, Minard and Plymale)

[Passed March 9, 2009; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-five-e, relating to creating the patients' eye care act; providing definitions; limitations on coverage; requiring certain disclosures; and other rights.

Be it enacted by the Legislature of West Virginia:
That chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twenty-five-e, to read as follows:

ARTICLE 25E. PATIENTS' EYE CARE ACT.

§33-25E-3. Limitations on conditions of coverage.
§33-25E-4. Required disclosure.


1 This article may be referred to as the patients' eye care act.


1 For the purposes of this article:

2 (a) "Covered person" means an individual enrolled in a health benefit plan or an eligible dependent of that person.

3 (b) "Eye care provider" means an optometrist or ophthalmologist licensed by the state of West Virginia.

4 (c) "Eye care benefits" means coverage for the diagnosis, treatment and management of eye disease and injury.

5 (d) "Health benefit policy" means any individual or group plan, policy or contract providing medical, hospital or surgical coverage issued, delivered, issued for delivery or renewed in this state by an insurer, after the first day of January, two thousand one. It does not include credit accident and sickness, long-term care, medicare supplement, champus supplement, disability or limited benefits policies.

6 (e) "Insurer" means any health care corporation, health maintenance organization, accident and sickness insurer, nonprofit hospital service corporation, nonprofit medical service corporation or similar entity.
19 (f) “Vision care benefits” means benefits for the refraction of the eyes and other optical benefits.

§33-25E-3. Limitations on conditions of coverage.

1 (a) Health benefits policies may not require that an optometrist hold hospital staff privileges.

2 (b) When any health benefits policy provides for the payment of eye care benefits or vision care benefits, such policy shall be construed to include payment to all eye care providers who provide benefits within the scope of their providers’ licenses.

3 (c) Any limitation or condition placed upon services, diagnosis or treatment by or payment to a particular type of licensed provider shall apply equally to all licensed providers without unfair discrimination as to the usual and customary treatment procedures of an eye care provider.

4 (d) Any health benefits policy that includes eye care benefits, including a diabetic retinal examination, shall provide each covered person diagnosed with diabetes direct access to an eye care provider of their choice from the insurer’s panel of providers independent of, and without referral from, any other provider or entity for one annual diabetic retinal examination. The eye care provider shall provide copies of the results of the examination to the covered person’s primary care physician. No other services shall be provided to the covered person by the eye care provider without the prior authorization of the insurer or of its designee. This benefit shall be subject to all coinsurance, deductibles, copayments and other policy requirements. When the diabetic retinal examination reveals the beginning stages of an abnormal condition, access to future examinations shall be subject to prior authorization from a primary care physician.
(e) Any health benefits policy that includes eye care benefits or vision care benefits shall include both optometrists and ophthalmologists.

(f) This article may not be construed to require any health benefits policy to cover any specific health care service.

(g) This article may not be construed to require a health benefit plan or an insurer to include on the insurer’s panel of providers all providers willing to meet the terms and conditions of participation as a plan provider.

§33-25E-4. Required disclosure.

Every health benefits policy that is issued, delivered, issued for redelivery or renewed in this state on or after the first day of January, two thousand one, that provides for eye care benefits, including a diabetic retinal examination, shall disclose in writing, in clear and accurate language, to enrollees, subscribers, providers and insureds that any covered person diagnosed with diabetes has the right to direct access to an eye care provider of their choice from the insurer’s panel of providers for an annual diabetic retinal examination.

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 eight, relating to the West Virginia pension liability redemption act; providing for declaration of policy, legislative findings, legislative intent and scope of
provisions; providing for definitions; providing for the redemption of the previous liability of the state consisting of the unfunded actuarial accrued liability of certain pension systems through the issuance of bonds for such purpose; providing for the issuance of such bonds and for the determination of the unfunded actuarial accrued liability; requiring adoption of resolution by Legislature authorizing the issuance of bonds; providing for the method of bond issuance and the manner of sale of bonds; providing for the authority of the department of administration to select, employ and compensate counsel, underwriters, advisors, consultants and agents to carry out the purposes of this article; providing for the authority of the state treasurer to select, employ and compensate special counsel to advise the state treasurer; providing authority to enter into contracts with obligation holders; providing for the terms and provisions of bonds, trust indentures and other agreements; providing for the redemption of the previous liability of the state, which is the unfunded actuarial accrued liability, with proceeds of the sale of bonds; providing for investment planning for the assets of the pension systems after deposit of the bond proceeds; providing for payment of costs of issuing bonds and review committee to review and approve same; limiting amount of bonds that may be issued; creating the pension liability redemption fund; providing for pension liability redemption payments; providing for refunding bonds; providing for state pledges and covenants relating to bonds; providing for legal remedies of obligation holders; providing that bonds are negotiable instruments; providing that bonds are legal investments in the state; providing that bonds and the income therefrom are exempt from taxation in the state; providing for supersedure; requiring a judicial determination prior to the issuance of bonds; and providing for severability of provisions of this article.

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 eight, to read as follows:

ARTICLE 8. PENSION LIABILITY REDEMPTION.
§12-8-1. Short title.

§12-8-2. Declaration of policy; legislative findings; legislative intent.

§12-8-3. Definitions.

§12-8-4. Issuance of bonds; determination of unfunded actuarial accrued liability.

§12-8-5. Method of bond issuance; manner of sale of bonds; authority of department of administration.

§12-8-6. Contracts with obligation holders; provisions of bonds and trust indentures and other agreements.

§12-8-7. Proceeds from the sale of bonds.

§12-8-8. Creation of pension liability redemption fund; disbursements to pay pension liability redemption payments.

§12-8-9. Refunding bonds.

§12-8-10. State pledges and covenants.

§12-8-11. Legal remedies of obligation holders.

§12-8-12. Nature of bonds; legal investments.

§12-8-13. Exemption from taxation.

§12-8-14. Supersedure.


§12-8-16. Severability.

§12-8-1. Short title.

This article shall be known and may be cited as the pension liability redemption act.

§12-8-2. Declaration of policy; legislative findings; legislative intent.

The Legislature finds and declares that:

(a) The Legislature has established a number of pension systems, including the death, disability and retirement fund of the department of public safety established in article two, chapter fifteen of this code; the judges' retirement system established in article nine, chapter fifty-one of this code; and the teachers retirement system established in article seven-a, chapter eighteen of this code, each of which is a trust for the benefit of the participating public employees.

(b) The supreme court of appeals of West Virginia has ruled that the Legislature is obligated to fund these pension systems on an actuarially sound basis and that pension system obligations are legitimate debts of the state.
(c) As a result of financial distress that occurred in the state during the 1980s, the death, disability and retirement fund of the department of public safety, the judges' retirement system and the teachers retirement system each has a significant unfunded actuarial accrued liability which is being amortized over a term of years ending no later than two thousand thirty-four through annual appropriations in addition to amounts appropriated annually for the normal cost contribution to these pension systems.

(d) The supreme court of appeals has ruled that the unfunded actuarial accrued liability of pension systems is a public debt of the state that must be repaid.

(e) The unfunded actuarial accrued liability of each pension system is a previous liability of the state. The supreme court of appeals has held that the Legislature may choose to redeem a previous liability of the state through the issuance of bonds.

(f) This article provides for the redemption of the unfunded actuarial accrued liability of each pension system, which is a previous liability of the state, through the issuance of bonds for the purpose of: (i) Providing for the safety and soundness of the pension systems; and (ii) redeeming each such previous liability of the pension systems in order to realize savings over the remaining term of the amortization schedules of the unfunded actuarial accrued liabilities and thereby achieve budgetary savings.

§12-8-3. Definitions.

As used in this article, unless the context clearly requires a different meaning:

(1) "Bonds" means bonds, notes, refunding notes and bonds, or other obligations of the state issued by the governor pursuant to this article.

(2) "Consolidated public retirement board" means the board created to administer all public retirement plans in this state under article ten-d of chapter five of this code and any board or
agency that succeeds to the powers and duties of the consolidated public retirement board.

(3) "Costs" include, but are not limited to, amounts necessary to fund any capitalized interest funds and any reserve funds, any costs relating to the issuance and determination of the validity of the bonds, fees for obtaining bond insurance, credit enhancements or liquidity facilities, administrative costs, fees incurred pursuant to subsection (f), section five of this article and costs attributable to the agreements described in section six of this article.

(4) "Death, disability and retirement fund" means the death, disability and retirement fund of the department of public safety created by article two, chapter fifteen of this code.

(5) "Department of administration" means the department established pursuant to article one, chapter five-a of this code and any board or agency that succeeds to the powers and duties of the department of administration.

(6) "Executive order" means an executive order issued by the governor to authorize the issuance of bonds as provided in this article.

(7) "Investment management board" means the board established under article six, chapter twelve of this code, and any board or agency that succeeds to the powers and duties of the investment management board.

(8) "Judges' retirement system" means the judicial retirement system created under article nine, chapter fifty-one of this code.

(9) "Obligation holders" means any holder or owner of any bond, any trustee or other fiduciary for any such holder, or any provider of a letter of credit, policy of bond insurance, surety, or other credit enhancement or liquidity facility or swap relating to any bond.
(10) "Pension liability redemption fund" means the special account in the state treasury created pursuant to subsection (a), section eight of this article.

(11) "Pension liability redemption payments" means: (a) The principal of, premium, if any, and interest on any outstanding bonds issued pursuant to this article; and (b) any other amounts required to be paid pursuant to the terms of any outstanding bonds, any indenture authorized pursuant to this article and any other agreement entered into between the governor and any obligation holder.

(12) "Pension systems" means the judges' retirement system, the death, disability and retirement fund and the teachers retirement fund.

(13) "Refund" or "refunding" means the issuance and sale of bonds the proceeds of which are used or are to be used for the payment, defeasance or redemption of outstanding bonds upon or prior to maturity.

(14) "Refunding bonds" means bonds issued for the payment, defeasance or redemption of outstanding bonds upon or prior to maturity.

(15) " Teachers retirement system" means the retirement system established in article seven-a, chapter eighteen of this code.

(16) "True interest cost" means the interest rate that, when compounded at time intervals consistent with the structure of the bond issue and used to discount the payments of principal of and interest on the bonds, causes such discounted principal and interest payments to equal the purchase price of the bonds. To ensure that the costs of issuance of the bonds are included in the true interest cost, the costs of issuance shall be deducted from the purchase price of the bonds before calculating the interest rate.

(17) "Normal cost" means the value of benefits accruing for the current valuation year under the actuarial cost method.
(18) "Actuarial cost method" means a mathematical process in which the cost of benefits projected to be paid after a period of active employment has ended is allocated over the period of active employment during which such benefits are earned.

(19) "Unfunded actuarial accrued liability" means the aggregate of the unfunded actuarial accrued liabilities of the pension systems, with the unfunded actuarial accrued liability of each pension system being calculated in an actuarial valuation report provided by the consolidated public retirement board to the department of administration pursuant to section four of this article.

§12-8-4. Issuance of bonds; determination of unfunded actuarial accrued liability.

(a) Notwithstanding any other provision of this code and pursuant to section four, article ten of the constitution of West Virginia, the governor shall have the power, as provided by this article, to issue the bonds authorized in this section at a time or times as provided by a resolution adopted by the Legislature to redeem a previous liability of the state by funding all or a portion of the unfunded actuarial accrued liability, such bonds to be payable from and secured by moneys deposited in the pension liability redemption fund. Any bonds issued pursuant to this article, other than refunding bonds, shall be issued no later than five years after the date of issuance of the judicial determination referred to in section fifteen of this article.

(b) The aggregate principal amount of bonds issued pursuant to the provisions of this article is limited to no more than the lesser of the following: (1) The principal amount necessary, after deduction of costs, underwriter's discount and original issue discount, if any, to fund not in excess of one hundred percent of the unfunded actuarial accrued liability of the death, disability and retirement fund of the department of public safety established in article two, chapter fifteen of this code, one hundred percent of the unfunded actuarial accrued liability of the judges' retirement system established in article nine, chapter fifty-one of this code, and ninety-five percent of
the unfunded actuarial accrued liability of the teachers retirement system established in article seven-a, chapter eighteen of this code, as certified by the consolidated public retirement board to the department of administration pursuant to subsection (e) of this section; or (2) three billion nine hundred million dollars; but in no event shall the aggregate principal amount of bonds issue exceed the principal amount necessary, after deduction of costs, underwriter’s discount and original issue discount, if any, to fund not in excess of the total unfunded actuarial accrued liability, as certified by the consolidated public retirement board to the department of administration pursuant to subsection (e) of this section.

(c) The costs of issuance, excluding fees for bond insurance, credit enhancements and liquidity facilities, plus underwriter’s discount and any other costs associated with the issuance shall not exceed, in the aggregate, the sum of one percent of the aggregate principal amount of bonds issued. All such costs shall be subject to the review and approval of a majority of the members of a review committee. The review committee shall consist of two members appointed by the governor from a list of three persons submitted by the president of the Senate; two members appointed by the governor from a list of three persons submitted by the speaker of the House of Delegates; the state treasurer; and four persons having skill and experience in bond issuance, appointed by the governor.

(d) The limitation on the aggregate principal amount of bonds provided in this section shall not preclude the issuance of bonds from time to time or in one or more series.

(e) No later than ten days after receipt of a request from the department of administration, the consolidated public retirement board shall provide the department of administration with a certified statement of the amount of each pension system’s unfunded actuarial accrued liability calculated in an actuarial valuation report that establishes the amount of the unfunded actuarial accrued liability as of a date specified by the depart-
ment of administration, based upon each pension system’s most
recent actuarial valuation.

(f) No later than fifteen days after receipt of a request from
the governor, the department of administration shall provide the
governor with a certification of the maximum aggregate
principal amount of bonds that may be issued at that time
pursuant to subsection (b) of this section.

§12-8-5. Method of bond issuance; manner of sale of bonds;
authority of department of administration.

(a) The governor may, by executive message, request the
Legislature prepare and consider a resolution authorizing the
issuance of bonds described in section four of this article. The
executive message shall specify the maximum costs associated
with the issue. Upon the adoption of a resolution by the
Legislature authorizing the issuance of the bonds in the amount
and upon the terms specified in the resolution, the bonds shall
be authorized by an executive order issued by the governor. The
executive order shall be received by the secretary of state and
filed in the state register pursuant to section three, article two,
chapter twenty-nine-a of this code. The governor, either in the
executive order authorizing the issuance of the bonds or by the
execution and delivery by the governor of a trust indenture or
agreement authorized in such executive order, shall stipulate the
form of the bonds, whether the bonds are to be issued in one or
more series, the date or dates of issue, the time or times of
maturity, which shall not exceed the longest remaining term of
the current amortization schedules for the unfunded actuarial
accrued liability, the rate or rates of interest payable on the
bonds, which may be at fixed rates or variable rates and which
interest may be current interest or may accrue, the denomina-
tion or denominations in which the bonds are issued, the
conversion or registration privileges applicable to some or all
of the bonds, the sources and medium of payment and place or
places of payment, the terms of redemption, any privileges of
exchangeability or interchangeability applicable to the bonds,
and the entitlement of obligation holders to priorities of
payment or security in the amounts deposited in the pension liability redemption fund. Bonds shall be signed by the governor and attested by the secretary of state, by either manual or facsimile signatures. The governor shall not sign the bonds unless he shall first make a written finding, which shall be transmitted to the state treasurer, the secretary of state, the speaker of the House of Delegates and the president of the Senate, that: (i) The true interest cost of the bonds is at least thirty basis points less than the assumed actuarial interest rate used to calculate the unfunded actuarial accrued liability; and (ii) that the issuance of the bonds will not in any manner cause a down grade or reduction in the state's general obligation credit rating by standard bond rating agencies.

(b) The bonds may be sold at public or private sale at a price or prices determined by the governor. The governor is authorized to enter into any agreements necessary or desirable to effectuate the purposes of this section, including agreements to sell bonds to any person and to comply with the laws of any jurisdiction relating thereto.

(c) The governor, in the executive order authorizing the issuance of bonds or by the execution and delivery by the governor of a trust indenture or agreement authorized in such executive order, may covenant as to the use and disposition of or pledge of funds made available for pension liability redemption payments or any reserve funds established pursuant to such executive order or established pursuant to any indenture authorized by such executive order. All costs may be paid by or upon the order of the governor from amounts received from the proceeds of the bonds and from amounts received pursuant to section eight of this article.

(d) Bonds may be issued by the governor upon resolution adopted by the Legislature authorizing the same.

(e) Neither the governor, the secretary of state, nor any other person executing or attesting the bonds or any agreement authorized in this article shall be personally liable with respect to payment of any pension liability redemption payments.
(f) Notwithstanding any other provision of this code, and subject to the approval of the review committee, the department of administration, in the department's discretion: (i) Shall select, employ and compensate one or more persons or firms to serve as bond counsel or cobond counsel who shall be responsible for the issuance of a final approving opinion regarding the legality of the bonds issued pursuant to this article; (ii) may select, employ and compensate one or more persons or firms to serve as underwriter or counderwriter for any issuance of bonds pursuant to this article; and (iii) may select, employ and compensate one or more fiduciaries, financial advisors and experts, other legal counsel, placement agents, appraisers, actuaries and such other advisors, consultants and agents as may be necessary to effectuate the purposes of this article. Notwithstanding the provisions of article three, chapter five of this code, bond counsel may represent the state in court, render advice and provide other legal services as may be requested by the governor or the department of administration regarding any bond issuance pursuant to this article and all other matters relating to the bonds.

(g) Notwithstanding any other provision of this code, and subject to the approval of the review committee, the state treasurer, in the state treasurer's discretion shall select, employ and compensate an independent person or firm to serve as special counsel to the state treasurer to advise the state treasurer with respect to the state treasurer's duties pursuant to this article.

§12-8-6. Contracts with obligation holders; provisions of bonds and trust indentures and other agreements.

(a) The governor may enter into contracts with obligation holders and the governor shall have the authority to comply fully with the terms and provisions of any contracts made with obligation holders.

(b) In addition and not in limitation to the other provisions of this section, in connection with any bonds issued pursuant to this article, the governor may enter into: (i) Commitments to
purchase or sell bonds and bond purchase or sale agreements; (ii) agreements providing for credit enhancement or liquidity, including revolving credit agreements, agreements establishing lines of credit or letters of credit, insurance contracts, surety bonds and reimbursement agreements; (iii) agreements to manage interest rate exposure and the return on investments, including interest rate exchange agreements, interest rate cap, collar, corridor, ceiling and floor agreements, option, rate spread or similar exposure agreements, float agreements and forward agreements; (iv) stock exchange listing agreements; and (v) any other commitments, contracts or agreements approved by the governor.

(c) The governor may covenant as to the bonds to be issued and as to the issuance of such bonds, in escrow or otherwise, provide for the replacement of lost, destroyed or mutilated bonds, covenant against extending the time for the payment of bonds or interest thereon and covenant for the redemption of bonds and provide the terms and conditions of such redemption.

(d) Except as otherwise provided in any executive order or in this article, the terms of the executive order and of this article in effect on the date the bonds are issued shall constitute a contract between the state and obligation holders. Any representation, warranty or covenant made by the governor in the executive order, any indenture of trust or trust agreement authorized by the executive order, any bond or any other contract entered into pursuant to this article with any obligation holder shall be a representation, warranty or covenant made by the state.

(e) The governor may vest in the obligation holders, or any portion of them, the right to enforce the payment of the bonds or agreements authorized in this article or any covenants securing or relating to the bonds or such agreements. The governor may prescribe the procedure, if any, by which the terms of any contract with obligation holders may be supplemented, amended or abrogated, prescribe which supplements or amendments will require the consent of obligation holders and
the portion of obligation holders required to effect such consent
and prescribe the manner in which such consent may be given.

§12-8-7. Proceeds from the sale of bonds.

(a) The proceeds from the sale of bonds, other than refunding bonds, issued pursuant to this article, after payment of any costs payable at time of issuance of such bonds, shall be paid to the consolidated public retirement board to redeem the unfunded actuarial accrued liability, which is a previous liability of the state, by funding the amount of the unfunded actuarial accrued liability provided for by such bonds.

(b) From time to time when requested by the department of administration, the investment management board shall prepare and submit to the governor, the speaker of the House of Delegates, the president of the Senate and the department of administration the short-term and long-term investment strategies that the investment management board intends to follow for investment of the plan assets of the pension systems, as adjusted by the deposit of the proceeds of bonds issued pursuant to this article.

(c) Commencing with the fiscal year following the fiscal year during which a series of bonds is issued under this article and the proceeds thereof are deposited into the applicable pension systems, annual appropriations by the state into the teachers retirement pension system required under other provisions of this code shall equal the amount necessary to pay the normal cost and the scheduled payment of the remaining unfunded actuarial accrued liability, if any, of such pension system: Provided, That if such amount in any one fiscal year is less than the members’ required contributions to such plan, as expressed as a percentage of members’ payroll, the state shall deposit into the pension liability redemption fund an amount expressed as a percentage of members’ payroll, representing the difference between what the state contributes to such plan, expressed as a percentage of members’ payroll, and what the members contribute to the plan, expressed as a percent of members’ payroll.
§12-8-8. Creation of pension liability redemption fund; disbursements to pay pension liability redemption payments.

(a) There is hereby created a special account in the state treasury to be administered by the state treasurer, which shall be designated and known as the "pension liability redemption fund", into which shall be deposited any and all amounts appropriated by the Legislature or funds from any other source whatsoever which are made available by law for the purpose of making pension liability redemption payments. All funds deposited to the credit of the pension liability redemption fund shall be held in a separate account and all money belonging to the fund shall be deposited in the state treasury to the credit of the pension liability redemption fund.

(b) On or before the first day of November of each year, the department of administration shall certify to the governor and the state treasurer and deliver to the speaker of the House of Delegates and the president of the Senate a certification as to the amount of pension liability redemption payments to be appropriated for the next fiscal year in order to pay in full when due all pension liability redemption payments that will become due during the next fiscal year. Such certification shall include the amount and due date of each such pension liability redemption payment. All moneys appropriated by the Legislature in accordance with a certification made pursuant to this subsection shall be deposited into the pension liability redemption fund.

(c) The state treasurer shall pay to the trustee under the trust indenture or agreement executed by the governor all pension liability redemption payments as and when due. Such payments shall be transferred by electronic funds transfer, unless some other manner of funds transfer is specified by the governor. No payments shall be required for bonds that are defeased or bonds for which a deposit sufficient to provide for all payments on the bonds has been made.

(d) There shall be created within the pension liability redemption fund a subaccount into which there shall be
deposited annually by the Legislature an amount not greater than the aggregate amount certified by each system’s actuary to represent the difference between the pension liability redemption payments and the annual amortization payments on the unfunded actuarial accrued liability that would have been due for such fiscal year had the bonds issued pursuant to this article not been issued. Upon resolution passed by the Legislature, the governor shall use funds on deposit in the subaccount in the amount and upon the terms specified in the resolution: (1) To reduce any remaining unfunded actuarial accrued liability; or (2) to provide for the early retirement of the bonds if possible.

§12-8-9. Refunding bonds.

Subject to the provisions of the outstanding bonds issued under this article and subject to the provisions of this article, the governor shall have the power to refund any outstanding bonds, whether the obligation refunded represents principal or interest, in whole or in part, at any time.

Refunding bonds shall mature at such time or times, which shall not exceed the longest original term of the bonds as issued, as the governor shall determine by executive order issued by the governor, which executive order shall be received by the secretary of state and filed in the state register pursuant to section three, article two, chapter twenty-nine-a of this code.

§12-8-10. State pledges and covenants.

(a) The state of West Virginia covenants and agrees with the obligation holders, and the indenture shall so state, that the bonds issued pursuant to this article are issued to redeem a previous liability of the state and shall therefore constitute a direct and general obligation of the state of West Virginia; that the pension liability redemption payments will be included in each budget along with all other amounts for payment and discharge of the principal of and interest on state debt; that the full faith and credit of the state is hereby pledged to secure the payment of the principal of and interest on the bonds; and that annual state taxes shall be collected in an amount sufficient to
pay the pension liability redemption payments as they become
due and payable from the pension liability redemption fund.

(b) The state hereby pledges and covenants with the
obligation holders, and the indenture shall so state, that the state
will not limit or alter the rights, powers or duties vested in any
state official, or that state official’s successors or assigns, and
the obligation holders in a way that will inhibit any state
official, or that state official’s successors or assigns, from
carrying out such state official’s rights, powers or duties under
this article, nor limit or alter the rights, powers or duties of any
state official, or that state official’s successors or assigns, in any
manner which would jeopardize the interest of any obligation
holder, or inhibit or prevent performance or fulfillment by any
state official, or that state official’s successors or assigns, with
respect to the terms of any agreement made with any obligation
holder pursuant to section six of this article.

c) The state hereby pledges and covenants with the
obligation holders, and the indenture shall so state, that, while
any of the bonds are outstanding, should any increase of
existing benefits or the creation of new benefits under any of
the pension systems, other than an increase in benefits or new
benefits effected by operation of law in effect on the effective
date of this article, cause any additional unfunded actuarial
accrued liability in any of the pension systems (calculated in an
actuarially sound manner) during any fiscal year, such addi-
tional unfunded actuarial accrued liability of that pension
system will be fully amortized over no more than the five
consecutive fiscal years following the date the increase in
benefits or new benefits become effective.

d) The state hereby pledges and covenants with the
obligation holders, and the indenture shall so state, that, while
any of the bonds are outstanding, should any additional
unfunded actuarial accrued liability in any of the pension
systems (calculated in an actuarially sound manner) occur
during any fiscal year due to changes in actuarial assumptions, changes in investment performance or increases in benefits or additional benefits occurring by operation of law in effect on the effective date of this article, and such additional unfunded actuarial accrued liability persists for a period of five consecutive fiscal years, the governor shall submit to the Legislature a plan to fund such additional unfunded actuarial accrued liability over a reasonable period.

§12-8-11. Legal remedies of obligation holders.

Any obligation holder, except to the extent that the rights given by this article may be restricted by the executive order authorizing the issuance of the bonds or by the trust indenture or agreement authorized in such executive order, may by civil action, mandamus or other proceeding, protect and enforce any rights granted under the laws of this state, granted under this article, or granted by the executive order or by the trust indenture or agreement authorized in such executive order, and may enforce and compel the performance of all duties required by this article, by the executive order or by the trust indenture or agreement authorized in such executive order.

§12-8-12. Nature of bonds; legal investments.

(a) The bonds issued under the provisions of this article shall be and have all the qualities of negotiable instruments under the uniform commercial code of this state and shall not be invalid for any irregularity or defect in the proceedings for the issuance thereof and shall be incontestable in the hands of bona fide purchasers or holders thereof for value.

(b) Notwithstanding any other provision of this code, the bonds issued pursuant to this article are securities in which all public officers and bodies of this state, including the investment management board, all municipalities and other political subdivisions of this state, all insurance companies and associations and other persons carrying on an insurance business,
§12-8-13. Exemption from taxation.

All bonds issued under the provisions of this article and the income therefrom shall be exempt from taxation by the state of West Virginia, or by any county, school district or municipality thereof, except inheritance, estate and transfer taxes.

§12-8-14. Supersedeure.

It is the intent of the Legislature that in the event of any conflict or inconsistency between the provisions of this article and any other law, to the extent of the conflict or inconsistency, the provisions of this article shall be enforced and the provisions of the other law shall be of no effect.


No bonds shall be issued under this article until a determination has been rendered by the supreme court of appeals that the issuance of the bonds and the provisions of this article are in compliance with the constitution of West Virginia.

§12-8-16. Severability.

If any section, subsection, subdivision, subparagraph, sentence or clause of this article is adjudged to be unconstitutional or invalid, such adjudication shall not affect the validity of the remaining portions of this article and, to this end, the provisions of this article are hereby declared to be severable.
AN ACT to repeal sections six and seven, article eight-a, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, two, three, four and five of said article, all relating to the distribution and display of obscene matter to minors; defining terms; creating felony for distributing, offering to distribute or displaying obscene matter to a minor; creating felony for distributing or displaying obscene matter to a minor with intent to seduce; establishing defenses; establishing exemptions from criminal liability; creating felony for using a minor in certain circumstances; and providing penalties.

Be it enacted by the Legislature of West Virginia:

That sections six and seven, article eight-a, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one, two, three, four and five of said article be amended and reenacted, all to read as follows:

ARTICLE 8A. PREPARATION, DISTRIBUTION OR DISPLAY OF OBSCENE MATTER TO MINORS.

§61-8A-2. Distribution and display to minor of obscene matter; penalties; defenses.
§61-8A-4. Use of obscene matter with intent to seduce minor.
§61-8A-5. Employment or use of minor to produce obscene matter or assist in doing sexually explicit conduct; penalties.


1 When used in this article, the following words, and any variations thereof required by the context, shall have the meaning ascribed to them in this section:
(a) "Adult" means a person eighteen years of age or older.

(b) "Computer network" means the interconnection of hardware or wireless communication lines with a computer through remote terminals, or a complex consisting of two or more interconnected computers.

(c) "Display" means to show, exhibit or expose matter, in a manner visible to general or invited public, including minors. As used in this article, display shall include the placing or exhibiting of matter on or in a billboard, viewing screen, theater, marquee, newsstand, display rack, window, showcase, display case or similar public place.

(d) "Distribute" means to transfer possession, transport, transmit, sell or rent, whether with or without consideration.

(e) "Employee" means any individual who renders personal services in the course of a business, who receives compensation and who has no financial interest in the ownership or operation of the business other than his salary or wages.

(f) "Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks.

(g) "Knowledge of the character of the matter" means having awareness of or notice of the overall sexual content and character of matter as depicting, representing, or describing obscene matter.

(h) "Matter" means any visual, audio, or physical item, article, production transmission, publication, exhibition, or live performance, or reproduction thereof, including any two or three dimensional visual or written material, film, picture, drawing, video, graphic, or computer generated or reproduced image; or any book, magazine, newspaper or other visual or written material; or any motion picture or other pictorial representation; or any statue or other figure; or any recording, transcription, or mechanical, chemical, or electrical reproduction; or any other articles, video laser disc, computer hardware and software, or computer generated images or message
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recording, transcription, or object, or any public or commercial
live exhibition performed for consideration or before an
audience of one or more.

(i) “Minor” means an unemancipated person under eighteen
years of age.

(j) “Obscene matter” means matter that:

(1) An average person, applying contemporary adult
community standards, would find, taken as a whole, appeals to
the prurient interest, is intended to appeal to the prurient
interest, or is pandered to a prurient interest;

(2) An average person, applying community standards,
would find depicts or describes, in a patently offensive way,
sexually explicit conduct; and

(3) A reasonable person would find, taken as a whole, lacks
serious literary, artistic, political or scientific value.

(k) “Parent” includes a biological or adoptive parent, legal
guardian or legal custodian.

(l) “Person” means any adult, partnership, firm, association,
corporation or other legal entity.

(m) “Sexually explicit conduct” means an ultimate sexual
act, normal or perverted, actual or simulated, including sexual
intercourse, sodomy, oral copulation, sexual bestiality, sexual
sadism and masochism, masturbation, excretory functions and
lewd exhibition of the genitals.

§61-8A-2. Distribution and display to minor of obscene matter;
penalties; defenses.

(a) Any adult, with knowledge of the character of the
matter, who knowingly and intentionally distributes, offers to
distribute, or displays to a minor any obscene matter, is guilty
of a felony and, upon conviction thereof, shall be fined not
more than twenty-five thousand dollars, or confined in a state
correctional facility for not more than five years, or both.
(b) It is a defense to a prosecution under the provisions of this section that the obscene matter:

1. Was displayed in an area from which minors are physically excluded and the matter so located cannot be viewed by a minor from nonrestricted areas; or

2. Was covered by a device, commonly known as a "blinder rack," such that the lower two thirds of the cover of the material is not exposed to view; or

3. Was enclosed in an opaque wrapper such that the lower two thirds of the cover of the material was not exposed to view; or

4. Was displayed or distributed after taking reasonable steps to receive, obtain or check an adult identification card, such as a driver's license or other technically or reasonably feasible means of verification of age.

(c) It is a defense to an alleged violation under this section that a parent had taken reasonable steps to limit the minor's access to the obscene matter.


The criminal provisions of section two of this article do not apply to:

1. A bona fide school, in the presentation of local or state approved curriculum;

2. A public library, or museum, which is displaying or distributing any obscene matter to a minor only when the minor was accompanied by his or her parent;

3. A licensed medical or mental health care provider, or judicial or law-enforcement officer, during the course of medical, psychiatric, or psychological treatment or judicial or law-enforcement activities;

4. A person who did not know or have reason to know, and could not reasonably have learned, that the person to whom the obscene matter was distributed or displayed was a minor and
who took reasonable measures to ascertain the identity and age
of the minor;

(e) A person who routinely distributes obscene matter by
the use of telephone, computer network or the internet and who
distributes such matter to any minor under the age of eighteen
years after the person has taken reasonable measures to prevent
access by minors to the obscene matter; or

(f) A radio or television station, cable television service or
other telecommunications service regulated by the federal
communications commission.

§61-8A-4. Use of obscene matter with intent to seduce minor.

Any adult, having knowledge of the character of the matter,
who knows that a person is a minor and distributes, offers to
distribute or displays by any means any obscene matter to the
minor, and such distribution, offer to distribute, or display is
undertaken with the intent or for the purpose of facilitating the
sexual seduction or abuse of the minor, is guilty of a felony and,
upon conviction thereof, shall be fined not more than twenty-
five thousand dollars, or confined in a state correctional facility
for not more than five years, or both. For a second and each
subsequent commission of such offense, such person is guilty
of a felony and, upon conviction, shall be fined not more than
fifty thousand dollars or confined in a state correctional facility
for not more than ten years, or both.

§61-8A-5. Employment or use of minor to produce obscene
matter or assist in doing sexually explicit conduct;
penalties.

Any adult who, with knowledge that a person is a minor or
who fails to exercise reasonable care in ascertaining the age of
a minor, hires, employs or uses such minor to produce obscene
matter or to do or assist in doing any sexually explicit conduct,
is guilty of a felony and, upon conviction thereof, shall be fined
not more than fifty thousand dollars or confined in a state
correctional facility for not more than ten years, or both.
AN ACT to amend and reenact sections three, four, five, six, seven, eight, nine, ten, ten-a, eleven, twelve, thirteen and fourteen, article twelve, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to postmortem examinations and the office of the chief medical examiner; stating more explicit qualifications for position of chief medical examiner; specifying term of appointment for same; providing independent authority of same for certain purposes; requiring continuous availability for consultation; directing the secretary of the department of health and human resources to propose certain legislative rules; authorizing certain agreements for use of fixtures, facilities and services; specifying additional qualifications and providing for compensation of pathologists performing services for the chief medical examiner; providing for appointment, compensation and removal of county medical examiners and assistant county medical examiners; powers and duties of same; providing for disclosure of certain medical records in death investigations; providing for certain fines and fees; providing for release of certain records under certain circumstances; requiring certain notice in cases of sudden infant death syndrome; and making technical changes and corrections.

Be it enacted by the Legislature of West Virginia:

That sections three, four, five, six, seven, eight, nine, ten, ten-a, eleven, twelve, thirteen and fourteen, article twelve, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 12. POSTMORTEM EXAMINATIONS.
§61-12-3. Office of chief medical examiner established; appointment, duties, etc., of chief medical examiner; assistants and employees; promulgation of rules.

§61-12-4. Central office and laboratory.
§61-12-5. Certain salaries and expenses paid by state.
§61-12-6. Chief medical examiner may obtain additional services and facilities.
§61-12-7. Medical examiners.
§61-12-8. Certain deaths to be reported to medical examiners; failure to report deaths; investigations and reports; authority of medical examiners to administer oaths, etc., fees.
§61-12-9. Permits required for cremation; fee.
§61-12-10. When autopsies made and by whom performed; reports; records of date investigated; copies of records and information.
§61-12-10a. Costs of transportation of bodies; when state will pay; amount of payment.
§61-12-11. Exhumation; when ordered.
§61-12-12. Facilities and services available to medical examiners.
§61-12-13. Reports and records received as evidence; copies.
§61-12-14. County coroners; appointment, oath, etc.; duties; fees.

§61-12-3. Office of chief medical examiner established; appointment, duties, etc., of chief medical examiner; assistants and employees; promulgation of rules.

(a) The office of chief medical examiner is hereby established within the division of health in the department of health and human resources. The office shall be directed by a chief medical examiner, who may employ pathologists, toxicologists, other forensic specialists, laboratory technicians, and other staff members, as needed to fulfill the responsibilities set forth in this article.

(b) All persons employed by the chief medical examiner shall be responsible to him or her and may be discharged for any reasonable cause. The chief medical examiner shall specify the qualifications required for each position in the office of chief medical examiner, and each position shall be subject to rules prescribed by the secretary of the department of health and human resources.

(c) The chief medical examiner shall be a physician licensed to practice medicine or osteopathic medicine in the
state of West Virginia, who is a diplomat of the American board of pathology in forensic pathology, and who has experience in forensic medicine. The chief medical examiner shall be appointed by the director of the division of health to serve a five-year term unless sooner removed, but only for cause, by the governor or by the director.

(d) The chief medical examiner shall be responsible to the director of the division of health in all matters except that the chief medical examiner shall operate with independent authority for the purposes of:

1) The performance of death investigations conducted pursuant to section eight of this article;
2) The establishment of cause and manner of death; and
3) The formulation of conclusions, opinions or testimony in judicial proceedings.

(e) The chief medical examiner, or his or her designee, shall be available at all times for consultation as necessary for carrying out the functions of the office of the chief medical examiner.

(f) The secretary of the department of health and human resources is hereby directed to propose legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code concerning:

1) The proper conduct of medical examinations into the cause of death;
2) The proper methods and procedures for postmortem inquiries conducted by county medical examiners and coroners;
3) The examination of substances taken from human remains in order to determine the cause and manner of death; and
(4) The training and certification of county medical examiners and coroners.

(g) The chief medical examiner is authorized to prescribe specific forms for record books and official papers which are necessary to the functions and responsibilities of the office of the chief medical examiner.

(h) The chief medical examiner, or his or her designee, is authorized to order and conduct an autopsy in accordance with the provisions of this article and this code. The chief medical examiner, or his or her designee, shall perform an autopsy upon the lawful request of any person authorized by the provisions of this code to request the performance of the autopsy.

(i) The salary of the chief medical examiner and the salaries of all assistants and employees of the office of the chief medical examiner shall be fixed by the Legislature from funds appropriated for that purpose. The chief medical examiner shall take an oath and provide a bond as required by law. Within the discretion of the director of the division of health, the chief medical examiner and his or her assistants shall lecture or instruct in the field of legal medicine and other related subjects to the West Virginia university or Marshall university school of medicine, the West Virginia school of osteopathic medicine, the West Virginia state police, other law-enforcement agencies and other interested groups.

§61-12-4. Central office and laboratory.

The office of the chief medical examiner shall establish and maintain a central office and a laboratory having adequate professional and technical personnel and medical and scientific facilities for the performance of the duties imposed by this article. In order to secure facilities sufficient to meet the duties imposed by the provisions of this code, the chief medical examiner is authorized to enter into agreements, subject to the approval of the director of the division of health, with other
§61-12-5. Certain salaries and expenses paid by state.

The salaries of the chief medical examiner, the salaries of all assistants and employees employed in the central office and laboratory, the expenses of maintaining the central office and laboratory and the cost of pathological, bacteriological and toxicological services rendered by persons other than the chief medical examiner and his assistants shall be paid by the state out of funds appropriated for that purpose.

§61-12-6. Chief medical examiner may obtain additional services and facilities.

Subject to the approval of the director of the division of health, the chief medical examiner may, in order to provide for the investigation of the cause of death as authorized in this article, employ and pay qualified pathologists and toxicologists to make autopsies and such pathological and chemical studies and investigations as he or she considers necessary, in the several counties or regions of the state and he or she may arrange for the use of existing laboratory facilities for such purposes. Qualified pathologists shall hold board certification or board eligibility in forensic pathology or have completed an American board of pathology fellowship in forensic pathology.

§61-12-7. Medical examiners.

(a) The chief medical examiner shall appoint for each county in the state a county medical examiner to serve for a term of three years under the supervision of the chief medical examiner. A county medical examiner shall be medically trained and licensed by the state of West Virginia as a physician, registered nurse, paramedic, emergency medical techni-
cian or a physician assistant, be certified in the practice of
medicolegal death investigation and be of good moral character.
County medical examiners are authorized to establish the fact of death, and to make investigations into all deaths in their
respective counties that come within the provisions of section
eight or ten of this article and shall in timely fashion record findings of an investigation using forms prescribed by the chief medical examiner. A county medical examiner may be removed from office for cause at any time by the chief medical examiner. Any vacancy in the office of county medical examiner shall be filled by the chief medical examiner. One person may be appointed to serve as county medical examiner for more than one county, and a county medical examiner need not be a resident of the county which he or she serves. If the chief medical examiner determines that it is necessary, he or she may appoint any person medically trained and licensed by the state of West Virginia as a physician, registered nurse, paramedic, emergency medical technician or a physician assistant and of good moral character to act as an assistant county medical examiner for a term of three years. An assistant shall have the same powers and duties as a county medical examiner and shall perform his or her duties under the supervision of the chief medical examiner.

(b) A county medical examiner or his or her assistant county medical examiner shall, at all times, be available to perform the duties required under this article. He or she shall, additionally, be paid a fee, as determined by the chief medical examiner, but only for the actual performance of his or her duties.

(c) County medical examiners and assistant county medical examiners are authorized to determine the cause and manner of death in any case falling within the provisions of section eight of this article, subject to the supervision of the chief medical examiner, and may exercise any of the powers attendant to the investigation of deaths.
§61-12-8. Certain deaths to be reported to medical examiners; failure to report deaths; investigations and reports; authority of medical examiners to administer oaths, etc., fees.

(a) When any person dies in this state from violence, or by apparent suicide, or suddenly when in apparent good health, or when unattended by a physician, or when an inmate of a public institution, or from some disease which might constitute a threat to public health, or in any suspicious, unusual or unnatural manner, the chief medical examiner, or his or her designee or the county medical examiner, or the coroner of the county in which death occurs shall be immediately notified by the physician in attendance, or if no physician is in attendance, by any law-enforcement officer having knowledge of the death, or by the funeral director, or by any other person present or having knowledge. Any physician or law-enforcement officer, funeral director or embalmer who willfully fails to comply with this notification requirement is guilty of a misdemeanor and, upon conviction, shall be fined not less than one hundred dollars nor more than five hundred dollars. Upon notice of a death under this section, the chief medical examiner, or his or her designee or the county medical examiner, shall take charge of the body and any objects or articles which, in his or her opinion, may be useful in establishing the cause or manner of death, and deliver them to the law-enforcement agency having jurisdiction in the case.

In the course of an investigation of a death required to be reported by this section, the chief medical examiner shall, upon written request to any law-enforcement agency or any state or regional correctional facility, be provided with all records of the investigation of decedent’s death and all records of decedent’s incarceration. Where a decedent received therapeutic, corrective or medical treatment prior to death, the chief medical examiner may request in writing that any person or other entity which rendered the treatment promptly provide all records within its
possession or control pertaining to the decedent and the
33 treatment rendered: Provided, That nothing contained in this
34 section may be construed as precluding the chief medical
35 examiner from directly inspecting or obtaining investigation
36 records, incarceration records or medical records related to the
37 case. Where records of a decedent become part of the chief
38 medical examiner’s file, they are not subject to subpoena or a
39 request for production directed to the chief medical examiner.

40 (b) A county medical examiner, or his or her assistant, shall
41 make inquiries regarding the cause and manner of death, reduce
42 his or her findings to writing, and promptly make a full report
43 thereof to the chief medical examiner on forms prescribed by
44 the chief medical examiner, retaining one copy of the report for
45 his or her own office records and providing one copy to the
46 prosecuting attorney of the county in which the death occurred.

47 (c) A county medical examiner or assistant medical
48 examiner shall receive a fee for each investigation performed
49 under the provisions of this article, including the making of
50 required reports, which fee shall be determined by the chief
51 medical examiner and paid out of funds appropriated therefor.

§61-12-9. Permits required for cremation; fee.

It shall be the duty of any person cremating, or causing or
requesting the cremation of, the body of any dead person who
died in this state, to secure a permit for the cremation from the
chief medical examiner, the county medical examiner or county
coroner of the county wherein the death occurred, and any
person or persons who willfully fail to secure the permit, upon
conviction thereof, shall be fined not less than two hundred
dollars. A permit for cremation shall be acted upon by the chief
medical examiner, the county medical examiner or the county
coroner after review of the circumstances surrounding the
death, as indicated by the death certificate. The person request-
ing issuance of a permit for cremation shall pay a reasonable
§61-12-10. When autopsies made and by whom performed; reports; records of date investigated; copies of records and information.

(a) If in the opinion of the chief medical examiner, or of the county medical examiner of the county in which the death in question occurred, it is advisable and in the public interest that an autopsy be made, or if an autopsy is requested by either the prosecuting attorney or the judge of the circuit court or other court of record having criminal jurisdiction in that county, an autopsy shall be conducted by the chief medical examiner or his or her designee, by a member of his staff, or by a competent pathologist designated and employed by the chief medical examiner under the provisions of this article. For this purpose, the chief medical examiner may employ any county medical examiner who is a pathologist who holds board certification or board eligibility in forensic pathology or has completed an American board of pathology fellowship in forensic pathology to make the autopsies, and the fees to be paid for autopsies under this section shall be in addition to the fee provided for investigations pursuant to section eight of this article. A full record and report of the findings developed by the autopsy shall be filed with the office of the chief medical examiner by the person making the autopsy.

(b) Within the discretion of the chief medical examiner, or of the person making the autopsy, or if requested by the prosecuting attorney of the county, or of the county where any injury contributing to or causing the death was sustained, a copy of the report of the autopsy shall be furnished to the prosecuting attorney.
(c) The office of the chief medical examiner shall keep full, complete and properly indexed records of all deaths investigated, containing all relevant information concerning the death and the autopsy report if such be made. Any prosecuting attorney or law-enforcement officer may secure copies of these records or information necessary for the performance of his or her official duties.

(d) Copies of these records or information shall be furnished, upon request, to any court of law, or to the parties therein to whom the cause of death is a material issue, except where the court determines that interests in a civil matter conflict with the interests in a criminal proceeding, in which case the interests in the criminal proceeding shall take precedence. The office of chief medical examiner shall be reimbursed a reasonable rate by the requesting party for costs incurred in the production of records under this subsection and subsection (c) of this section.

(e) The chief medical examiner is authorized to release investigation records and autopsy reports to the multidisciplinary team authorized by section three, article five-d, chapter forty-nine of this code. At the direction of the secretary of the department of health and human resources the chief medical examiner may release records and information to other state agencies when considered to be in the public interest.

(f) Any person performing an autopsy under this section is empowered to keep and retain, for and on behalf of the chief medical examiner, any tissue from the body upon which the autopsy was performed which may be necessary for further study or consideration.

(g) In cases of the death of any infant in the state of West Virginia where sudden infant death syndrome is the suspected cause of death and the chief medical examiner or the medical examiner of the county in which the death in question occurred
consider it advisable to perform an autopsy, it is the duty of the chief medical examiner or the medical examiner of the county in which the death occurred to notify the sudden infant death syndrome program within the division of maternal and child health and to inform the program of all information to be given to the infant’s parents.

§61-12-10a. Costs of transportation of bodies; when state will pay; amount of payment.

Whenever an examination of a body is ordered pursuant to section eight or ten of this article and the body of the deceased is transported to the central laboratory or other place of examination, the reasonable cost of the transportation shall be paid by the state out of funds appropriated to or for the use of the office of the chief medical examiner. Transportation at state expense shall be provided from the place where the body is being kept at the time the examination is ordered to the central laboratory or other place of examination, and, upon completion of the examination, to the place designated by the person entitled to possession of the body: Provided, That if the body is to be returned a greater distance than it was taken for the examination, the state shall only be obligated for the cost of return of the body equal to or less than that incurred to take the body for the examination. The payment shall be of a reasonable amount set by the office of the chief medical examiner, including, but not limited to, payment of any part of the total cost as the office of the chief medical examiner allows.

§61-12-11. Exhumation; when ordered.

If, in any case of sudden, violent or suspicious death, the body is buried without any investigation by the chief medical examiner, or by a county medical examiner or coroner, it is the duty of the chief medical examiner or the county medical examiner or coroner, upon being advised of this fact, to notify the prosecuting attorney of the county, who shall communicate
the same to the judge of the circuit court or other court of record
having jurisdiction in the county and the judge may order that
the body be exhumed and an autopsy performed thereon, as
provided in section ten of this article and the pertinent facts
disclosed by the autopsy shall be communicated to the prosecut-
ing attorney of the county.

§61-12-12. Facilities and services available to medical examiners.

Pursuant to rules promulgated by the secretary of the
department of health and human resources, the facilities of the
office of the chief medical examiner and its laboratory, and the
services of its professional staff, shall be made available to the
county medical examiners and coroners in their investigations
under the provisions of section eight of this article, and to the
persons conducting autopsies under the provisions of section ten
of this article.

§61-12-13. Reports and records received as evidence; copies.

Reports of investigations and autopsies, and the records
thereof, on file in the office of the chief medical examiner or in
the office of any county medical examiner, shall be received as
evidence in any court or other proceeding, and copies of
records, photographs, laboratory findings and records on file in
the office of the chief medical examiner or in the office of any
county medical examiner, when duly attested by the chief
medical examiner or by the county medical examiner, assistant
county medical examiner or coroner in whose office the same
are filed, shall be received as evidence in any court or other
proceeding for any purpose for which the original could be
received without any proof of the official character of the
person whose name is signed thereto unless objected to by
counsel: Provided, That statements of witnesses or other
persons and conclusions upon extraneous matters are not hereby
made admissible.
§61-12-14. County coroners; appointment, oath, etc.; duties; fees.

It is the duty of the county commission of every county, from time to time, to appoint a coroner for the county, who shall hold the office during the pleasure of the commission and shall take the oath of office prescribed for other county officers. The county coroners shall be certified in medicolegal investigations, be continually available to perform the duties required under this article and shall be paid such fees or amounts for the services as may be fixed by the chief medical examiner.

CHAPTER 195
(H. B. 4062 — By Delegates Douglas, Varner, Kuhn, Perdue, Caputo, Modesitt and Willison)

[Passed February 15, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two-a, eight and twelve, article one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the duties of professional licensing boards; orientation session; requiring legislative rules for complaint procedures; and filing of annual reports.

Be it enacted by the Legislature of West Virginia:

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

§30-1-2a. Required orientation session.
§30-1-8. Denial, suspension or revocation of a license or registration; probation; proceedings; effect of suspension or revocation; transcript; report; judicial review.
§30-1-2a. Required orientation session.

(a) After the first day of April and not later than the first day of December of each year, the auditor shall provide at least one orientation session on relevant state law and rules governing state boards and commissions. All state agencies shall cooperate with and assist in providing the orientation session if the auditor requests.

(b) After the effective date of this section, all chairs or chief financial officers of state boards and commissions newly created by the Legislature shall attend an orientation session designed to inform the state boards and commissions of the duties and requirements imposed on state boards and commissions by state law and rules. The chair or chief financial officer of the newly created board or commission shall attend an orientation session at the earliest possible date following the creation of the board or commission.

(c) The orientation session shall include a minimum of thirty minutes of instructional time dedicated to the statutory duty of boards to investigate and resolve complaints, including procedures for investigations, administrative hearings and remedies, due process protections, and the duty to provide public access to records of the disposition of complaints, as set forth in section five of this article.

(d) Topics for the orientation session may include, but are not limited to: The official conduct of members, state budgeting and financial procedures, purchasing requirements, open meetings requirements, ethics, rule-making procedures, records management, annual reports and any other topics the auditor determines to be essential in the fulfillment of the duties of the members of state boards and commissions.
(e) The orientation session shall be open to any member of new or existing boards and commissions and each board or commission may approve expense reimbursement for the attendance of one or more of its members. The chair or chief financial officer of each existing board or commission shall attend an orientation session within two years following the effective date of this section.

(f) No later than the thirty-first day of December of each year, the auditor shall provide to the chairs of the joint standing committee on government operations a list of the names of board or commission members attending, together with the names of the boards and commissions represented, the orientation session or sessions offered by the auditor during the previous year.

(g) The auditor may charge a registration fee for the orientation session to cover the cost of providing the orientation session. The fee may be paid from funds available to a board or commission.

(h) Notwithstanding the member’s normal rate of compensation for serving on a board, a member attending the orientation session may be reimbursed for necessary and actual expenses, as long as the member attends the complete orientation session.

(i) Ex officio members who are elected or appointed state officers or employees, and members of boards or commissions that have purely advisory functions with respect to a department or agency of the state, are exempt from the requirements of this section.

§30-1-8. Denial, suspension or revocation of a license or registration; probation; proceedings; effect of suspension or revocation; transcript; report; judicial review.
(a) Every board referred to in this chapter is authorized to suspend or revoke the license of any person who has been convicted of a felony or who has been found to have engaged in conduct, practices or acts constituting professional negligence or a willful departure from accepted standards of professional conduct. Where any person has been so convicted of a felony or has been found to have engaged in such conduct, practices or acts, every board referred to in this chapter is further authorized to enter into consent decrees, to reprimand, to enter into probation orders, to levy fines not to exceed one thousand dollars per day per violation, or any of these, singly or in combination. Each board is also authorized to assess administrative costs. Any costs which are assessed shall be placed in the special account of the board, and any fine which is levied shall be deposited in the state treasury’s general revenue fund. For purposes of this section, the word "felony" means a felony or crime punishable as a felony under the laws of this state, any other state, or the United States. Every board referred to in this chapter is authorized to promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code to delineate conduct, practices or acts which, in the judgment of the board, constitute professional negligence, a willful departure from accepted standards of professional conduct or which may render an individual unqualified or unfit for licensure, registration or other authorization to practice.

(b) Notwithstanding any other provision of law to the contrary, no certificate, license, registration or authority issued under the provisions of this chapter may be suspended or revoked without a prior hearing before the board or court which issued the certificate, license, registration or authority. However, this does not apply in cases where a board is authorized to suspend or revoke a certificate, license, registration or authority prior to a hearing if the individual’s continuation in practice constitutes an immediate danger to the public.
(c) In all proceedings before a board or court for the suspension or revocation of any certificate, license, registration or authority issued under the provisions of this chapter, a statement of the charges against the holder thereof and a notice of the time and place of hearing shall be served upon the person as a notice is served under section one, article two, chapter fifty-six of this code, at least thirty days prior to the hearing, and he or she may appear with witnesses and be heard in person, by counsel, or both. The board may take oral or written proof, for or against the accused, as it may deem advisable. If upon hearing the board finds that the charges are true, it may suspend or revoke the certificate, license, registration or authority, and suspension or revocation shall take from the person all rights and privileges acquired thereby.

(d) Pursuant to the provisions of section one, article five, chapter twenty-nine-a of this code, informal disposition may also be made by the board of any contested case by stipulation, agreed settlement, consent order or default. Further, the board may suspend its decision and place a licensee found by the board to be in violation of the applicable practice on probation.

(e) Any person denied a license, certificate, registration or authority who believes the denial was in violation of this article or the article under which the license, certificate, registration or authority is authorized shall be entitled to a hearing on the action denying the license, certificate, registration or authority. Hearings under this subsection shall be in accordance with the provisions for hearings which are set forth in this section.

(f) A stenographic report of each proceeding on the denial, suspension or revocation of a certificate, license, registration or authority shall be made at the expense of the board and a transcript thereof retained in its files. The board shall make a written report of its findings, which shall constitute part of the record.
(g) All proceedings under the provisions of this section are subject to review by the supreme court of appeals.

(h) On or before the first day of July, two thousand, every board referred to in this chapter shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, which shall specify a procedure for the investigation and resolution of all complaints against persons licensed under this chapter.

§30-1-12. Record of proceedings; register of applicants; certified copies of records prima facie evidence; report to governor and Legislature; public access.

(a) The secretary of every board shall keep a record of its proceedings and a register of all applicants for license or registration, showing for each the date of his or her application, his or her name, age, educational and other qualifications, place of residence, whether an examination was required, whether the applicant was rejected or a certificate of license or registration granted, the date of this action, the license or registration number, all renewals of the license or registration, if required, and any suspension or revocation thereof. The books and register of the board shall be open to public inspection at all reasonable times, and the books and register, or a copy of any part thereof, certified by the secretary and attested by the seal of the board, shall be prima facie evidence of all matters recorded therein.

(b) On or before the first day of January of each year in which the Legislature meets in regular session, the board shall submit to the governor and to the Legislature a report of its transactions for the preceding two years, an itemized statement of its receipts and disbursements for that period, a full list of the names of all persons licensed or registered by it during that period, statistical reports by county of practice, by specialty if appropriate to the particular profession, and a list of any complaints which were filed against persons licensed by the
board, including any action taken by the board regarding those
complaints. The report shall be certified by the president and
the secretary of the board, and a copy of the report shall be filed
with the secretary of state and with the legislative librarian.

(c) To promote public access, the secretary of every board
shall ensure that the address and telephone number of the board
are included every year in the state government listings of the
Charleston area telephone directory. Every board shall regularly
evaluate the feasibility of adopting additional methods of
providing public access, including, but not limited to, listings
in additional telephone directories, toll-free telephone numbers,
facsimile and computer-based communications.

CHAPTER 196
(S. B. 184 — By Senator Minear)

[Passed March 9, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article three, chapter
thirty of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to acts which do not constitute
the practice of medicine; and amending the reference to certifica-
tion of persons who provide orthotic and prosthetic devices by a
particular credentialing body.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.
§30-3-13. Unauthorized practice of medicine and surgery or podiatry; criminal penalties; limitations.

(a) A person shall not engage in the practice of medicine and surgery or podiatry, hold himself or herself out as qualified to practice medicine and surgery or podiatry or use any title, word or abbreviation to indicate to or induce others to believe that he or she is licensed to practice medicine and surgery or podiatry in this state unless he or she is actually licensed under the provisions of this article. A person engaged in the practice of telemedicine is considered to be engaged in the practice of medicine within this state and is subject to the licensure requirements of this article. As used in this section, the term "practice of telemedicine" means the use of electronic information and communication technologies to provide health care when distance separates participants and includes one or both of the following: (1) The diagnosis of a patient within this state by a physician located outside this state as a result of the transmission of individual patient data, specimens or other material by electronic or other means from within this state to the physician or his or her agent; or (2) the rendering of treatment to a patient within this state by a physician located outside this state as a result of transmission of individual patient data, specimens or other material by electronic or other means from within this state to the physician or his or her agent. No person may practice as a physician's assistant, hold himself or herself out as qualified to practice as a physician's assistant, or use any title, word or abbreviation to indicate to or induce others to believe that he or she is licensed to practice as a physician's assistant in this state unless he or she is actually licensed under the provisions of this article. Any person who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than ten thousand dollars, or imprisoned in the county jail not more than twelve months, or both fined and imprisoned.

(b) The provisions of this section do not apply to:
(1) Persons who are duly licensed health care providers under other pertinent provisions of this code and are acting within the scope of their license;

(2) Physicians or podiatrists licensed in other states or foreign countries who are acting in a consulting capacity with physicians or podiatrists duly licensed in this state, for a period of not more than three months: Provided, That this exemption is applicable on a one-time only basis;

(3) An individual physician or podiatrist, or physician or podiatrist, or physician or podiatrist groups, or physicians or podiatrists at a tertiary care or university hospital outside this state and engaged in the practice of telemedicine who consult or render second opinions concerning diagnosis or treatment of patients within this state: (i) In an emergency or without compensation or expectation of compensation; or (ii) on an irregular or infrequent basis which occurs less than once a month or less than twelve times in a calendar year;

(4) Persons holding licenses granted by another state or foreign country who are commissioned medical officers of, a member of or employed by the armed forces of the United States, the United States public health service, the veterans’ administration of the United States, any federal institution or any other federal agency while engaged in the performance of their official duties;

(5) Any person providing first-aid care in emergency situations;

(6) The practice of the religious tenets of any recognized church in the administration of assistance to the sick or suffering by mental or spiritual means;

(7) Visiting medical faculty engaged in teaching or research duties at a medical school or institution recognized by the board and who are in this state for periods of not more than six
Provided, That the individuals do not otherwise engage in the practice of medicine or podiatry outside of the auspices of their sponsoring institutions;

(8) Persons enrolled in a school of medicine approved by the liaison committee on medical education or by the board, or persons enrolled in a school of podiatric medicine approved by the council of podiatry education or by the board, or persons enrolled in an undergraduate or graduate physician assistant program approved by the committee on allied health education and accreditation or its successor on behalf of the American medical association or by the board, or persons engaged in graduate medical training in a program approved by the liaison committee on graduate medical education or the board, or engaged in graduate podiatric training in a program approved by the council on podiatric medical education or by the board, who are performing functions in the course of training including with respect to functions performed by medical residents or medical students under the supervision of a licensed physician, ordering and obtaining laboratory tests, medications and other patient orders by computer or other electronic means and no other provision of this code to the contrary may be construed to prohibit or limit medical residents' or medical students' use of computers or other electronic devices in this manner;

(9) The fitting, recommending or sale of corrective shoes, arch supports or similar mechanical appliances in commercial establishments; and

(10) The fitting or sale of a prosthetic or orthotic device not involving any surgical procedure, in accord with a prescription of a physician, osteopathic physician, or where chiropractors or podiatrists are authorized by law to prescribe such a prosthetic or orthotic device, in accord with a prescription of a chiropractor or podiatrist, by a practitioner certified in the provision of custom orthotic and prosthetic devices, respectively, by a nationally recognized credentialing body for orthotics and prosthetics that is accredited by the national commission for
certifying agencies (NCCA): Provided, That the sale of any prosthetic or orthotic device by a partnership, proprietorship or corporation which employs such a practitioner or registered technician who fitted the prosthetic or orthotic device shall not constitute the unauthorized practice of medicine: Provided, however, That the practitioner or registered technician may, without a prescription, make recommendation solely to a physician or osteopathic physician or to a chiropractor or podiatrist otherwise authorized by law to prescribe a particular prosthetic or orthotic device, regarding any prosthetic or orthotic device to be used for a patient upon a request for such recommendation.

(c) This section shall not be construed as being in any way a limitation upon the services of a physician’s assistant performed in accordance with the provisions of this article.

(d) Persons covered under this article may be permitted to utilize electronic signature or unique electronic identification to effectively sign materials, transmitted by computer or other electronic means, upon which signature is required for the purpose of authorized medical practice. Such signatures are deemed legal and valid for purposes related to the provision of medical services. This subsection does not confer any new practice privilege or right on any persons covered under this article.
article by adding thereto a new section, designated section seven-a, relating to authorizing the West Virginia board of examiners in counseling to propose legislative rules for restricted practice licensure of addictions counselors.

Be it enacted by the Legislature of West Virginia:

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

§30-31-2. Definitions.

§30-31-7. Qualifications of applicants for license; application fee.

§30-31-7a. Restricted practice license for addictions counselors.

§30-31-2. Definitions.

1 As used in this article:

2 (1) “Applicant” means any person making an application for an original or renewal license under the provisions of this article;

3 (2) “Board” means the West Virginia board of examiners in counseling established by this article;

4 (3) “Counseling” means rendering, offering to render or supervising those who render any service for compensation or other personal gain involving the application of mental health counseling procedures to help in learning how to solve problems or make decisions related to careers, personal growth, marriage, family or other interpersonal or intrapersonal concerns;

5 (4) “Counselor” means one who holds himself or herself out to the public as engaged in the practice of counseling as defined herein, and, in so doing, represents that he or she has
(5) "Licensed professional counselor" means a counselor as defined herein who holds a valid license to practice counseling issued pursuant to this article; and

(6) "Mental health counseling procedures" include, but are not restricted to, the use of methods and techniques which contribute to self-understanding, desired personal behavior change or more effective interpersonal behavior; assessment techniques useful in appraising aptitudes, abilities, achievements, interest or attitudes; informational and community resources for career, personal or social development; individual and group techniques which facilitate problem-solving behavior or decision making; and supervision, referral and placement techniques and methods which serve to further the goals of counseling.

(7) "Substance abuse counseling procedures" or "addictions counseling procedures" include, but are not restricted to, informing, motivating, guiding and assisting those persons affected either directly or indirectly by problems related to the misuse of alcohol and/or other drugs, or by problems related to addictions.

(8) "Supervised setting" means an institution, clinic or other health care facility employing a counselor holding a restricted practice license under section seven-a of this article, where one or more health care professionals fully licensed under this chapter, which may include persons other than the approved professional supervisor, are generally available on the premises.

(9) "Supervision" means individual control or direction over the services of a counselor holding a restricted practice license under section seven-a of this article, by an approved professional supervisor as defined by the board by rule. Continual and uninterrupted physical presence of the approved
professional supervisor is not required so long as he or she is available for telephone consultation, and meets the requirement for one (1) hour of direct individual supervision for every twenty (20) hours of services provided by the counselor holding a restricted practice license as provided in section seven-a of this article.

§30-31-7. Qualifications of applicants for license; application fee.

(a) To be eligible for a license to engage in the practice of counseling, an applicant must:

(1) Be a legal resident of the state of West Virginia;

(2) Satisfy the board that he or she is of good moral character and merits the public trust, which shall be evidenced as follows:

(A) If the applicant has never been convicted of a felony or a crime involving moral turpitude, the applicant shall submit letters of recommendation from three persons not related to the applicant and a sworn statement from the applicant stating that he or she has never been convicted of a felony or a crime involving moral turpitude; or

(B) If the applicant has been convicted of a felony or a crime involving moral turpitude, it is a rebuttable presumption that the applicant is unfit for licensure unless he or she submits competent evidence of sufficient rehabilitation and present fitness to perform the duties of a licensed professional counselor as may be established by the production of: (i) Documentary evidence including a copy of the relevant release or discharge order, evidence showing compliance with all conditions of probation or parole, evidence showing that at least one year has elapsed since release or discharge without subsequent conviction, and letters of reference from three persons who have been in contact with the applicant since his or her release or discharge; and (ii) any collateral evidence and testimony as
may be requested by the board which shows the nature and
seriousness of the crime, the circumstances relative to the crime
or crimes committed and any mitigating circumstances or social
conditions surrounding the crime or crimes and any other
evidence necessary for the board to judge present fitness for
licensure or whether licensure will enhance the likelihood that
the applicant will commit the same or similar offenses;

(3) Not be an alcohol or drug abuser as these terms are
defined in section eleven, article one-a, chapter twenty-seven of
this code: Provided, That an applicant who has had at least two
continuous years of uninterrupted sobriety in an active recovery
process, which may, in the discretion of the board, be evidenced
by participation in a twelve-step program or other similar group
or process, may be considered;

(4) Have earned a master’s degree in an accredited counseling
program or in a field closely related to an accredited
counseling program as determined by the board, or have
received training equivalent to such degree as may be deter-
dined by the board, and have at least two years of supervised
professional experience in counseling of such a nature as shall
be designated by the board, including at least one year’s
experience after earning an aforementioned master’s degree or
equivalent; or have earned a doctorate degree in an accredited
counseling program or in a field closely related to an accredited
counseling program as determined by the board, or have
received training equivalent to such degree as may be deter-
dined by the board, and have at least one year of supervised
professional experience in counseling of such a nature as shall
be designated by the board after earning an aforementioned
doctorate degree or equivalent; and

(5) Have passed a standardized national certification
examination in counseling approved by the board.

(b) Any person who holds a license or certificate to engage
in the practice of counseling issued by any other state, the
qualifications for which license or certificate are determined by
the board to be at least as great as those provided in this article,
is eligible for licensure.

(c) Every applicant must submit an application for a license
to practice counseling to the secretary of the board in such
manner, on such forms and containing such information as the
board may prescribe and pay to the board a nonrefundable
application fee as established by the board.

(d) Any person who has been continually licensed under
this article since the year one thousand nine hundred eighty-
seven, pursuant to prior enactments permitting waiver of certain
examination and other requirements, is eligible for renewal of
licensure.

§30-31-7a. Restricted practice license for addictions counselors.

(a) On or before the first day of July, two thousand, the
board shall propose rules for legislative approval in accordance
with the provisions of article three, chapter twenty-nine-a of
this code, authorizing restricted practice licensure for addic-
tions counselors who meet all of the requirements for licensure
set forth in section seven of this article, other than the require-
ment that the applicant hold a master's or doctorate degree, and
who make application to the board within two years of the date
of passage of the rule. The rule shall set forth requirements
related to the practice of substance abuse counseling procedures
or addictions counseling procedures under supervision in a
supervised setting.

(b) Rules pursuant to this section shall require that appli-
cants for restricted practice licensure:

(1) Hold current certification as a certified addictions
counselor (CAC) by the international certification reciprocity
consortium/alcohol and other drugs of abuse (ICRC/AODA) or
its successor organization and be in good standing with the
(2) Hold a baccalaureate degree which would meet the qualifications for admission to an accredited graduate degree program in counseling;

(3) Document acceptance to and enrollment in an educational program that would, within seven years of the date of application, lead to:

(A) The award of a master’s degree in an accredited counseling program or in a field closely related to an accredited counseling program as determined by the board, or training equivalent to an accredited counseling program or in a field closely related to a master’s degree in an accredited counseling program as determined by the board, and at least two years of supervised professional experience, at least one year of which must be attained after earning the master’s degree, all as approved by the board; or

(B) The award of a doctorate degree in an accredited counseling program or in a field closely related to an accredited counseling program as approved by the board, or training equivalent to a doctorate degree in an accredited counseling program or in a field closely related to an accredited counseling program as approved by the board, and at least one year of supervised professional experience which must be attained after earning the doctorate degree, all as approved by the board;

(4) Submit a written job description or summary outlining the duties of the applicant’s current or proposed employment working with addicted persons or their families;

(5) Submit a description of the institution, clinic or other setting where services to addicted persons or their families are being or will be provided;

(6) Submit the curriculum vitae of an approved professional supervisor as defined by the board by rule, together with a letter signed by that individual agreeing to supervise the applicant’s practice under the restricted practice license; and
(7) Submit other information that the board may reasonably require.

(c) The rules related to supervision of counselors holding a restricted practice license under this section shall require a minimum of one (1) hour of direct individual supervision by the approved professional supervisor for every twenty (20) hours of counseling services provided by the counselor holding a restricted practice license. The direct individual supervision shall include examination of selected patient or client records of sufficient number to assure adequate review of the scope of practice of the counselor holding a restricted practice license, and periodic, at least monthly, education and review sessions discussing specific problems, therapeutic approaches, procedures and specific patients or clients.

(d) The board shall review, at least annually, the educational progress of each person holding a restricted practice license under this article, to verify that his or her progress is sufficient to meet the requirements of the board and of this article. Annual renewal of the restricted practice license is conditioned upon continued approved supervision, continued educational progress which must include at a minimum the successful completion of six (6) hours of approved graduate coursework per year, and compliance with the requirements of rules promulgated pursuant to this section.

CHAPTER 198

(H. B. 4800 — By Delegates Michael, Leach, Doyle, Kelley, Facemyer and Border)

[Passed March 11, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven-b; and to
amend and reenact section twenty-five of said article, all relating
generally to the public employees insurance agency; establishing
a new prescription drug program within the public employees
insurance agency; requiring the executive director to appoint an
advisory committee; setting forth guidelines for the new program;
authorizing contract amendments; requiring reporting; and
changing reserve fund to require specific percentages.

Be it enacted by the Legislature of West Virginia:

That article sixteen, 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 seven-b; and that section
twenty-five of said article be amended and reenacted, all to read as
follows:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-7b. Prescription benefit program.

§5-16-25. Reserve fund.

§5-16-7b. Prescription benefit program.

(a) Findings—The Legislature finds that the rapidly rising
cost of prescription drugs places an undue financial burden on
the state of West Virginia, the payors, and the consumers of
prescription drugs. The Legislature further finds that those
rising costs are related to the following factors:

(1) National pharmaceutical trends reflecting that prescrip-
tion spending has doubled in the past eight years from forty-
nine billion dollars per year to an estimated one hundred
nineteen billion dollars in the year two thousand. This trend
reflects successes in drug therapy research, drug effectiveness,
and an overall improvement in the quality of life. However, the
trend also signals an increase in drug cost and utilization, which
impacts all West Virginians directly or indirectly;

(2) The aging of our state population and increased life
expectancy of our citizens have a significant impact on the
rising cost and utilization of prescription drugs in West Virginia. When these factors are combined with the escalating number of drug-related preventative treatments, increased product development, and growing consumerism in the prescription drug market, many West Virginians are forced to utilize an increasing portion of their income to maintain their physical and mental health;

(3) Four decades ago, more than ninety percent of drug costs were paid by consumers. Now, more than half the cost of prescription drugs are supplemented by governmental and private health insurance, thus removing usual market forces that serve to control costs. This poses a substantial burden on the taxpayers of West Virginia to support the state's health benefit programs, as well as their own; and

(4) Despite the data reflecting a substantial percentage decrease in physician and hospital expenses, the number of drugs reaching the billion dollar sales mark has doubled since 1994, which contributes to the overall increase in health care expenditures in the United States.

(b) Advisory committee—The executive director of the public employees insurance agency shall appoint an advisory committee of six persons to assist in the development of a rational and equitable prescription benefit program. The advisory committee is to be composed of physicians representing specialists and primary care practices, pharmacists, including clinical pharmacists and a representative of the vendor for the prescription benefit program. The executive director shall serve as the chairperson. The advisory committee shall meet routinely, upon the call of the chairperson. The advisory committee may form any number of ad hoc committees, representing expertise in the particular area of study for that ad hoc committee, to assist with the development and implementation of the prescription benefit program authorized by this section.
(c) Program design—The advisory committee shall design a prescription drug strategy statement to guide all decisions made by the advisory committee. The strategy statement shall reflect consideration of the goals of a prescription benefit program, the needs of the various populations served and the overall value to the state of these expenditures. In developing the prescription benefit program, the committee shall focus on specific disease states or conditions, the appropriate pharmaceutical management or treatment of those disease states or conditions, and prioritize that information for purposes of establishing the appropriate level of third party coverage, giving consideration to the appropriate priority given to coverage for life saving, life enhancing, life lengthening, life style and cosmetic drugs. In determining the levels of third party coverage, the advisory committee may continue to separate generic prescription drugs from the brand name prescription drugs.

(d) Development and revisions—The advisory committee shall develop and submit the prescription benefit program to the agency no later than the first day of July, two thousand one. The advisory committee shall continuously evaluate the prescription benefit program and make necessary revisions to maintain conformity with the goals of the prescription benefit program, which are to be (1) responsive to the needs of the employees insured by the program, and (2) fiscally accountable to the taxpayers of the state of West Virginia.

(e) Contracts—After receiving and reviewing the prescription benefit program, the executive director may amend any existing prescription benefit program contract, or enter into a separate contract, to establish the prescription benefit program authorized in this section: Provided, That for a new contract, the provisions of section nine of this article apply.

§5-16-25. Reserve fund.

Upon the effective date of this section, the finance board shall establish and maintain a reserve fund for the purposes of
offsetting unanticipated claim losses in any fiscal year. Beginning with the fiscal year two thousand two plan and for each succeeding fiscal year plan, the finance board shall transfer ten percent of the projected total plan costs for that year into the reserve fund, which is to be certified by the actuary and included in the final, approved financial plan submitted to the governor and Legislature in accordance with the provisions of this article. Any moneys saved in a plan year shall be transferred into the reserve fund. At the close of any fiscal year in which the balance in the reserve fund exceeds the recommended reserve amount by fifteen percent, the executive director shall transfer that amount to the fund established in section fourteen-a, article two, chapter five-a of this code for appropriation by the Legislature.

CHAPTER 199

(Com. Sub. for S. B. 29 — By Senator Hunter)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing that a public service district which sells water for resale to other water utilities in addition to servicing retail customers may adopt an alternative method of determining the salaries of its board members which is based on the annual revenues of the public service district.

Be it enacted by the Legislature of West Virginia:

That section four, article thirteen-a, 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 13A. PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE AND GAS SERVICES.

§16-13A-4. Board chairman; members' compensation; procedure; district name.

(a) The chairman shall preside at all meetings of the board and may vote as any other member of the board. If the chairman is absent from any meeting, the remaining members may select a temporary chairman and if the member selected as chairman resigns as such or ceases for any reason to be a member of the board, the board shall select one of its members as chairman to serve until the next annual organization meeting.

(b) Salaries of the board members are:

(1) For districts with fewer than six hundred customers, up to seventy-five dollars per attendance at regular monthly meetings and fifty dollars per attendance at additional special meetings, total salary not to exceed fifteen hundred dollars per annum;

(2) For districts with six hundred customers or more but fewer than two thousand customers, up to one hundred dollars per attendance at regular monthly meetings and seventy-five dollars per attendance at additional special meetings, total salary not to exceed two thousand five hundred fifty dollars per annum;

(3) For districts with two thousand customers or more, up to one hundred twenty-five dollars per attendance at regular monthly meetings and seventy-five dollars per attendance at additional special meetings, total salary not to exceed three thousand seven hundred fifty dollars per annum; and

(4) For districts with four thousand or more customers, up to one hundred fifty dollars per attendance at regular monthly
meetings and one hundred dollars per attendance at additional
special meetings, total salary not to exceed five thousand four
hundred dollars per annum.

The public service district shall certify the number of
customers served to the public service commission beginning
on the first day of July, one thousand nine hundred eighty-six,
and continue each fiscal year thereafter.

(c) Public service districts selling water to other water
utilities for resale may adopt the following salaries for its board
members:

(1) For districts with annual revenues of less than fifty
thousand dollars, up to seventy-five dollars per attendance at
regular monthly meetings and fifty dollars per attendance at
additional special meetings, total salary not to exceed fifteen
hundred dollars per annum;

(2) For districts with annual revenues of fifty thousand
dollars or more, but less than two hundred fifty thousand
dollars, up to one hundred dollars per attendance at regular
monthly meetings and seventy-five dollars per attendance at
special meetings, total salary not to exceed two thousand five
hundred fifty dollars per annum;

(3) For districts with annual revenues of two hundred fifty
thousand dollars or more, but less than five hundred thousand
dollars, up to one hundred twenty-five dollars per attendance at
regular monthly meetings and seventy-five dollars per attend-
dance at additional special meetings, total salary not to exceed
three thousand seven hundred fifty dollars per annum; and

(4) For districts with annual revenues of five hundred
thousand dollars or more, up to one hundred fifty dollars per
attendance at regular monthly meetings and one hundred dollars
per attendance at additional special meetings, total salary not to exceed five thousand four hundred dollars per annum.

The public service district shall certify the number of customers served and its annual revenue to the public service commission beginning on the first day of July, two thousand, and continue each fiscal year thereafter.

(d) Board members may be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties as provided for by the rules of the board.

e) The board shall by resolution determine its own rules of procedure, fix the time and place of its meetings and the manner in which special meetings may be called. Public notice of meetings shall be given in accordance with section three, article nine-a, chapter six of this code. Emergency meetings may be called as provided for by said section. A majority of the members constituting the board also constitute a quorum to do business.

(f) The members of the board are not personally liable or responsible for any obligations of the district or the board, but are answerable only for willful misconduct in the performance of their duties. At any time prior to the issuance of bonds as hereinafter provided, the board may by resolution change the official or corporate name of the public service district and the change is effective from the filing of an authenticated copy of such resolution with the clerk of the county commission of each county in which the territory embraced within such district or any part thereof is located and with the public service commission. The official name of any district created under the provisions of this article may contain the name or names of any city, incorporated town or other municipal corporation included therein or the name of any county or counties in which it is located.
AN ACT to amend and reenact section thirty, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to obtaining money, goods or other property from the state or any political subdivision of the state under a contract, by false pretense, token or representation, or by delivery of inferior commodities, with intent to defraud; setting forth legislative statement of purpose; extending to political subdivisions the offense of obtaining money, goods or other property under a contract, by false pretense, token or representation, or by delivery of inferior commodities, with intent to defraud, and providing penalties for such felony offense; prohibiting certain described defenses; and defining the term "inferior commodities".

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. PURCHASING DIVISION.

§5A-3-30. Statement of purpose; obtaining money and property under false pretenses or by fraud from the state or a political subdivision of the state; penalties; definition.
(a) The Legislature of the state of West Virginia hereby declares that the purpose of this statute is to promote equal and fair bidding for the purchase of commodities by the state and any political subdivision of the state purchasing commodities under any state contract: to eliminate fraud in the procurement of commodities by the state.

(b) It is unlawful for any person to obtain any money, goods or other property from the state or any political subdivision of the state under any contract made under the provisions of this article, by false pretense, token or representation, or by delivery of inferior commodities, with intent to defraud. A person who violates this subsection is guilty of a felony, and, upon conviction thereof, shall be confined in a state correctional facility for not less than one year nor more than five years, and shall be fined not exceeding one thousand dollars.

(c) It shall not be a defense to a charge under this section that (1) the commodities purchased were accepted and used, or are being used, by the state or a political subdivision of the state, or (2) the commodities are functional or suitable for the purpose for which the commodities were purchased by the state or a political subdivision of the state notwithstanding the standard or specification issued by the purchasing agency or the division of purchasing.

(d) For the purpose of this section, "inferior commodities" includes, but shall not be limited to, (1) any commodity which does not meet the specification or standard issued by the purchasing agency and the division of purchasing, or any change order approved by both the purchasing agency and division of purchasing, and (2) any commodity which is of a lesser quality, quantity, or measure of any kind set forth within the specification or standard issued by the purchasing agency and the division of purchasing.
AN ACT to amend and reenact sections seven and twelve, article twenty-two-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to racetrack video lottery generally; requiring a national crime records check for licensure; and reducing required number of video lottery terminals.

Be it enacted by the Legislature of West Virginia:

That sections seven and twelve, 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, all to read as follows:

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

§29-22A-7. License and permit qualifications; individual qualifications; applicant required to furnish information; waiver of liability; oath or affirmation; duty to provide accurate and material information.

§29-22A-12. Number and location of video lottery terminals security.

§29-22A-7. License and permit qualifications; individual qualifications; applicant required to furnish information; waiver of liability; oath or affirmation; duty to provide accurate and material information.

(a) No video lottery license or permit may be granted unless the commission has determined that the applicant satisfies all of the following qualifications:
(1) An applicant for a video lottery license must hold a valid racing license granted by the West Virginia racing commission under provisions of article twenty-three, chapter nineteen of this code.

(2) An applicant must be a person of good character and integrity.

(3) An applicant must be a person whose background, including criminal record, reputation and associations, does not pose a threat to the security and integrity of the lottery or to the public interest of the state. All new applicants for licenses and permits issued by the commission shall furnish fingerprints for a national criminal records check by the criminal identification bureau of the West Virginia state police and the federal bureau of investigation. The fingerprints shall be furnished by all persons required to be named in the application and shall be accompanied by a signed authorization for the release of information by the criminal investigation bureau and the federal bureau of investigation. The commission may require any applicant seeking the renewal of a license or permit to furnish fingerprints for a national criminal records check by the criminal identification bureau of the West Virginia state police and the federal bureau of investigation. A person who has been convicted of any violation of article twenty-two of this chapter or of this article or of any crime related to theft, bribery, gambling or involving moral turpitude is not eligible for any license or permit. The commission shall revoke the license or permit of any person who is convicted of any such crime after a license or permit is granted.

(4) An applicant must be a person who demonstrates the business ability and experience necessary to establish, operate and maintain the business for which a video lottery license or permit application is made.
(5) An applicant must be a person who has secured adequate financing for the business for which a video lottery license or permit application is made. The commission shall determine whether financing is from a source which meets the qualifications of this section and is adequate to support the successful performance of the duties and responsibilities of the licensed racetrack or permit holder. An applicant for a video lottery license shall disclose all financing or refinancing arrangements for the purchase, lease or other acquisition of video lottery terminals and associated equipment in the degree of detail requested by the commission. A licensed racetrack shall request commission approval of any change in financing or lease arrangements at least thirty days before the effective date of the change.

(6) A racetrack applying for a video lottery license or a license renewal must present to the commission evidence of the existence of an agreement, regarding the proceeds from video lottery terminals, between the applicant and the representative of a majority of the horse owners and trainers, the representative of a majority of the pari-mutuel clerks and the representative of a majority of the breeders or the representative of a majority of the kennel owners for the applicable racetrack who hold permits required by section two, article twenty-three, chapter nineteen of this code.

(7) A racetrack applying for a video lottery license or a license renewal must file with the commission a copy of any current or proposed agreement between the applicant and any manufacturer for the sale, lease or other assignment to the racetrack of video lottery terminals, the electronic computer components of the terminals, the random number generator of the terminals, or the cabinet in which it is housed. Once filed with the commission, the agreement is a public document subject to the provisions of article one, chapter twenty-nine-b of this code.
(b) No video lottery license or permit may be granted to an applicant until the commission determines that each person who has control of the applicant meets all applicable qualifications of subsection (a) of this section. The following persons are considered to have control of an applicant:

(1) Each person associated with a corporate applicant, including any corporate holding company, parent company or subsidiary company of the applicant, but not including a bank or other licensed lending institution which holds a mortgage or other lien acquired in the ordinary course of business, who has the ability to control the activities of the corporate applicant or elect a majority of the board of directors of that corporation.

(2) Each person associated with a noncorporate applicant who directly or indirectly holds any beneficial or proprietary interest in the applicant or who the commission determines to have the ability to control the applicant.

(3) Key personnel of an applicant, including any executive, employee or agent, having the power to exercise significant influence over decisions concerning any part of the applicant’s business operation.

(c) Applicants must furnish all information, including financial data and documents, certifications, consents, waivers, individual history forms and other materials requested by the commission for purposes of determining qualifications for a license or permit. No video lottery license or permit may be granted to an applicant who fails to provide information and documentation requested by the commission. The burden of proving qualification for any video lottery license or permit is on the applicant.

(d) Each applicant bears all risks of adverse public notice, embarrassment, criticism, damages or financial loss which may result from any disclosure or publication of any material or
information obtained by the commission pursuant to action on an application. The applicant shall, as a part of its application, expressly waive any and all claims against the commission, the state of West Virginia and the employees of either for damages as a result of any background investigation, disclosure or publication relating to an application for a video lottery license or permit.

(e) All application, registration and disclosure forms and other documents submitted to the commission by or on behalf of the applicant for purposes of determining qualification for a video lottery license or permit shall be sworn to or affirmed before an officer qualified to administer oaths.

(f) An applicant who knowingly fails to reveal any fact material to qualification or who knowingly submits false or misleading material information is ineligible for a video lottery license or permit.

§29-22A-12. Number and location of video lottery terminals security.

(a) A racetrack which has been licensed to conduct video lottery games has the right to install and operate up to four hundred video lottery terminals at a licensed racetrack. A licensed racetrack may apply to the commission for authorization to install and operate more than four hundred video lottery terminals. If the commission determines that the installation of additional machines is in the best interest of the licensed racetrack, the lottery commission and the citizens of this state, the commission may grant permission to install and operate additional machines.

(b) All video lottery terminals in licensed racetracks shall be physically located as follows:

(1) The video lottery location shall be continuously monitored through the use of a closed circuit television system
capable of recording activity for a continuous 24-hour period. All video tapes shall be retained for a period of at least thirty days:

(2) Access to video lottery terminal locations shall be restricted to persons legally entitled by age to play video lottery games;

(3) The licensed racetrack shall submit for commission approval a floor plan of the area or areas where video lottery terminals are to be operated showing terminal locations and security camera mount locations;

(4) No video lottery terminal may be relocated without prior approval from the commission; and

(5) Operational video lottery terminals may only be located in the building or structure in which the grandstand area of the racetrack is located and in the area of the building or structure where pari-mutuel wagering is permitted under the provisions of article twenty-three, chapter nineteen of this code: Provided, That if the commission, before the first day of November, one thousand nine hundred ninety-three, has authorized any racetrack to operate video lottery terminals and offer video lottery games in a location which would not conform to the requirements of this subdivision, the racetrack may continue to use video lottery terminals registered with and approved by the commission at that nonconforming location and to offer the games and any variations or composites of the games as may be approved by the commission.

(c) A licensee shall allow video lottery games to be played only on days when live racing is being conducted at the racetrack and/or on televised racing days: Provided, That this restriction shall not apply to any racetrack authorized by the commissioner prior to the first day of November, one thousand
nine hundred ninety-three, to operate video lottery terminals
and conduct video lottery games.

(d) Security personnel shall be present during all hours of
operation at each video lottery terminal location. Each license
holder shall employ the number of security personnel the
commission determines is necessary to provide for safe and
approved operation of the video lottery facilities and the safety
and well-being of the players.

CHAPTER 202

(Com. Sub. for H. B. 4430 — By Delegates L. Smith, Hall,
Warner, Mattaliano, Douglas, Staton and Boggs)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and six, article two-a,
chapter thirty-one of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, all relating to blocking
emergency medical vehicles at railroad crossings; and penalties.

Be it enacted by the Legislature of West Virginia:

That sections two and six, article two-a, chapter thirty-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 2A. RAILROAD CROSSING.

§31-2A-6. Fines and penalties.


(a) It is unlawful for any railroad company, except in an
emergency, to order, allow or permit the operation of or to
operate or to so operate its system so that a train blocks the
passage of vehicular traffic over the railroad crossing of any
public street, road or highway of this state for a period longer
than ten minutes. This section does not apply to an obstruction
of any such street, road or highway caused by a continuously
moving train or caused by circumstances wholly beyond the
control of the railroad, but does apply to all other obstructions
as aforesaid, including, but not limited to, those caused by a
stopped train or a train engaged in switching, loading or
unloading operations: Provided, That if any such train is within
the jurisdictional limits of any municipality which now has or
hereafter shall have in force and effect an ordinance limiting the
time a railroad crossing may be blocked by a train, such
ordinance shall govern, and the provisions of this article shall
not be applicable.

(b) Upon receiving notification from a law-enforcement
officer, member of a fire department, operator of an emergency
medical vehicle, or a member of an emergency services
provider that emergency circumstances require the immediate
clearing of a public highway railroad grade crossing, the
members of the train crew of the train, railroad car or equip-
ment, or engine blocking such crossing shall immediately notify
the appropriate railroad dispatcher of the pending emergency
circumstances by the train crew or dispatcher, the railroad shall
immediately clear the crossing, consistent with the safe
operation of the train.

§31-2A-6. Fines and penalties.

(a) Any railroad company, carrier or railroad violating the
provisions of subsection (a), section two of this article is guilty
of a misdemeanor and, upon conviction thereof, shall be fined not
less than one hundred fifty dollars; upon a second conviction
occurring at the same crossing within one year thereafter, shall
be fined not less than two hundred fifty dollars; and upon a
third or subsequent conviction occurring at the same crossing within one year after the first conviction, shall be fined not less than three hundred fifty dollars.

(b) Any railroad company, carrier or railroad violating the provisions of subsection (b), section two of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one thousand dollars; upon a second conviction occurring at the same crossing within one year thereafter, shall be fined not less than two thousand five hundred dollars; and upon a third or subsequent conviction occurring at the same crossing within one year after the first conviction, shall be fined not less than five thousand dollars.

CHAPTER 203

(H. B. 4102 — By Delegates Jenkins, Hubbard, J. Smith, Campbell, Williams, Hall and Harrison)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]
ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-2. Definitions.
§5-10-21. Deferred retirement and early retirement.
§5-10-22. Retirement annuity.

§5-10-2. Definitions.

The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, have the following meanings:

(1) "State" means the state of West Virginia;

(2) "Retirement system" or "system" means the West Virginia public employees retirement system created and established by this article;

(3) "Board of trustees" or "board" means the board of trustees of the West Virginia public employees retirement system;

(4) "Political subdivision" means the state of West Virginia, a county, city or town in the state; a school corporation or corporate unit; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns: Provided, That any mental health agency participating in the public employees retirement system before the first day of July, one thousand nine hundred ninety-seven, is considered a political subdivision solely for the purpose of permitting those employees who are members of the public employees retirement system to remain members and continue to participate in the retirement system at their option after the first day of July, one thousand nine hundred ninety-seven;
(5) "Participating public employer" means the state of West Virginia, any board, commission, department, institution or spending unit, and includes any agency created by rule of the supreme court of appeals having full-time employees, which for the purposes of this article is considered a department of state government; and any political subdivision in the state which has elected to cover its employees, as defined in this article, under the West Virginia public employees retirement system;

(6) "Employee" means any person who serves regularly as an officer or employee, full time, on a salary basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of, and whose compensation is payable, in whole or in part, by any political subdivision, or an officer or employee whose compensation is calculated on a daily basis and paid monthly or on completion of assignment, including technicians and other personnel employed by the West Virginia national guard whose compensation, in whole or in part, is paid by the federal government: Provided, That members of the Legislature, the clerk of the House of Delegates, the clerk of the Senate, employees of the Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who have been or are employed during regular sessions or during the interim between regular sessions in seven consecutive calendar years, as certified by the clerk of the house in which the employee served, members of the legislative body of any political subdivision and judges of the state court of claims are considered to be employees, anything contained in this article to the contrary notwithstanding. In any case of doubt as to who is an employee within the meaning of this article, the board of trustees shall decide the question;

(7) "Member" means any person who is included in the membership of the retirement system;
(8) “Retirant” means any member who retires with an annuity payable by the retirement system;

(9) “Beneficiary” means any person, except a retirant, who is entitled to, or will be entitled to, an annuity or other benefit payable by the retirement system;

(10) “Service” means personal service rendered to a participating public employer by an employee, as defined in this article, of a participating public employer;

(11) “Prior service” means service rendered prior to the first day of July, one thousand nine hundred sixty-one, to the extent credited a member as provided in this article;

(12) “Contributing service” means service rendered by a member within this state and for which the member made contributions to a public retirement system account of this state, to the extent credited him or her as provided by this article. This revised definition is retroactive and applicable to the first day of April, one thousand nine hundred eighty-eight, and thereafter;

(13) “Credited service” means the sum of a member’s prior service credit and contributing service credit standing to his or her credit as provided in this article;

(14) “Limited credited service” means service by employees of the West Virginia educational broadcasting authority, in the employment of West Virginia university, during a period when the employee made contributions to another retirement system, as required by West Virginia university, and did not make contributions to the public employees retirement system: Provided, That while limited credited service can be used for the formula set forth in section twenty-one, subsection (e) of this article, it may not be used to increase benefits calculated under section twenty-two of this article;
(15) "Compensation" means the remuneration paid a member by a participating public employer for personal services rendered by him or her to the participating public employer. In the event a member's remuneration is not all paid in money, his or her participating public employer shall fix the value of the portion of his or her remuneration which is not paid in money;

(16) "Final average salary" means either:

(a) The average of the highest annual compensation received by a member (including a member of the Legislature who participates in the retirement system in the year one thousand nine hundred seventy-one or thereafter) during any period of three consecutive years of his or her credited service contained within his or her ten years of credited service immediately preceding the date his or her employment with a participating public employer last terminated; or

(b) If he or she has less than five years of credited service, the average of the annual rate of compensation received by him or her during his or her total years of credited service; and in determining the annual compensation, under either paragraph (a) or (b) of this subdivision, of a member of the Legislature who participates in the retirement system as a member of the Legislature in the year one thousand nine hundred seventy-one or in any year thereafter, his or her actual legislative compensation (the total of all compensation paid under sections two, three, four and five, article two-a, chapter four of this code) in the year one thousand nine hundred seventy-one or in any year thereafter, plus any other compensation he or she receives in any year from any other participating public employer including the state of West Virginia, without any multiple in excess of one times his or her actual legislative compensation and other compensation, shall be used: Provided, That "final average salary" for any former member of the Legislature or for any member of the Legislature in the year one thousand nine hundred seventy-one who, in either event, was a member of the
Legislature on the thirtieth day of November, one thousand nine hundred sixty-eight, or the thirtieth day of November, one thousand nine hundred sixty-nine, or the thirtieth day of November, one thousand nine hundred seventy, or on the thirtieth day of November in any one or more of those three years, and who participated in the retirement system as a member of the Legislature in any one or more of those years means: (i) Either (notwithstanding the provisions of this subdivision preceding this proviso) one thousand five hundred dollars multiplied by eight, plus the highest other compensation the former member or member received in any one of the three years from any other participating public employer including the state of West Virginia; or (ii) "final average salary" determined in accordance with paragraph (a) or (b) of this subdivision, whichever computation produces the higher final average salary (and in determining the annual compensation under (ii) of this proviso, the legislative compensation of the former member shall be computed on the basis of one thousand five hundred dollars multiplied by eight, and the legislative compensation of the member shall be computed on the basis set forth in the provisions of this subdivision immediately preceding this proviso or on the basis of one thousand five hundred dollars multiplied by eight, whichever computation as to the member produces the higher annual compensation);

(17) "Accumulated contributions" means the sum of all amounts deducted from the compensations of a member and credited to his or her individual account in the members' deposit fund, together with regular interest on the contributions;

(18) "Regular interest" means the rate or rates of interest per annum, compounded annually, as the board of trustees adopts from time to time;

(19) "Annuity" means an annual amount payable by the retirement system throughout the life of a person. All annuities
shall be paid in equal monthly installments, using the upper cent for any fraction of a cent;

(20) “Annuity reserve” means the present value of all payments to be made to a retirant or beneficiary of a retirant on account of any annuity, computed upon the basis of such mortality and other tables of experience, and regular interest, as the board of trustees adopts from time to time;

(21) “Retirement” means a member’s withdrawal from the employ of a participating public employer with an annuity payable by the retirement system;

(22) “Actuarial equivalent” means a benefit of equal value computed upon the basis of such mortality table and regular interest as the board of trustees adopts from time to time; and

(23) “Retroactive service” means: (1) Service an employee was entitled to, but which the employer has not withheld or paid for; or (2) that service from the first day of July, one thousand nine hundred sixty-one, and the date an employer decides to become a participating member of the public employees retirement system; or (3) service prior to the first day of July, one thousand nine hundred sixty-one, for which the employee is not entitled to prior service at no cost in accordance with 162 CSR 5.16.

§5-10-21. Deferred retirement and early retirement.

(a) Any member who has five or more years of credited service in force, of which at least three years are contributing service, and who leaves the employ of a participating public employer prior to his or her attainment of age sixty years, for any reason except his or her disability retirement or death, is entitled to an annuity computed according to section twenty-two of this article, as that section was in force as of the date of his or her said separation from the employ of a participating public employer: Provided, That he or she does not withdraw his or her accumulated contributions from the members’ deposit fund. His or her said annuity begins the first day of the calendar year.

*Clerk's Note: This section was also amended by S. B. 652 (Chapter 204), which passed subsequent to this act.
month next following the month in which his or her application
is filed with the board of trustees on or after his or her attain-
ment of age sixty-two years.

(b) Any member who qualifies for deferred retirement
benefits in accordance with subsection (a) of this section, and
has ten or more years of credited service in force and who has
attained age fifty-five as of the date of his or her separation
may, prior to the effective date of his or her retirement, but not
thereafter, elect to receive the actuarial equivalent of his or her
delayed retirement annuity as a reduced annuity commencing
on the first day of any calendar month between his or her date
of separation and his or her attainment of age sixty-two years
and payable throughout his or her life.

(c) Any member who qualifies for deferred retirement
benefits in accordance with subsection (a) of this section, and
has twenty or more years of credited service in force, may elect
to receive the actuarial equivalent of his or her deferred
retirement annuity as a reduced annuity commencing on the
first day of any calendar month between his or her fifty-fifth
birthday and his or her attainment of age sixty-two years and
payable throughout his or her life.

(d) Notwithstanding any of the other provisions of this
section or of this article and pursuant to rules promulgated by
the board, any member who has thirty or more years of credited
service in force, at least three of which are contributing service,
and who elects to take early retirement, which for the purposes
of this subsection means retirement prior to age sixty, whether
an active employee or a separated employee at the time of
application, is entitled to the full computation of annuity
according to section twenty-two of this article, as that section
was in force as of the date of retirement application, but with
the reduced actuarial equivalent of the annuity the member
would have received if his or her benefit had commenced at age
sixty when he or she would have been entitled to full computation of benefit without any reduction.

(e) Notwithstanding any of the other provisions of this section or of this article, any member of the retirement system may retire with full pension rights, without reduction of benefits, if the member is at least fifty-five years of age and the sum of his or her age plus years of contributing service and limited credited service as defined in section two of this article equals or exceeds eighty.

§5-10-22. Retirement annuity.

Upon a member’s retirement, as provided in this article, he or she shall receive a straight life annuity equal to one and five-tenths percent of his or her final average salary multiplied by the number of years, and fraction of a year, of his or her credited service in force at the time of his or her retirement. The credited service used for this calculation may not include any period of limited credited service: Provided, That after March one, one thousand nine hundred seventy, all members retired and all members retiring shall receive a straight life annuity equal to two percent of his or her final average salary multiplied by the number of years, and fraction of a year, of his or her credited service, exclusive of limited credited service in force at the time of his or her retirement. In either event, upon his or her retirement he or she has the right to elect an option provided for in section twenty-four of this article. All annuity payments shall commence effective the first of the month following the month in which a member retires or a member dies leaving a beneficiary entitled to benefits and shall continue to the end of the month in which the retirant or beneficiary dies, and the annuity payments may not be prorated for any portion of a month in which a member retires or retirant or beneficiary dies. Any member receiving an annuity based in part upon limited credited service is not eligible for the supplements provided for
in sections twenty-two-a through twenty-two-d, inclusive, of this article.

The annuity of any member of the Legislature who participates in the retirement system as a member of the Legislature and who retires under this article or of any former member of the Legislature who has retired under this article (including any former member of the Legislature who has retired under this article and whose annuity was readjusted as of the first day of March, one thousand nine hundred seventy, under the former provisions of this section) shall be increased from time to time during the period of his or her retirement when and if the legislative compensation paid under section two, article two-a, chapter four of this code to a member of the Legislature shall be increased to the point where a higher annuity would be payable to the retirant if he or she were retiring as of the effective date of the latest increase in such legislative compensation, but on the basis of his or her years of credited service to the date of his or her actual retirement.

CHAPTER 204

(S. B. 652 -- By Senators Plymale, Fanning, Jackson, Walker, McCabe, Edgell and Sprouse)

[Passed March 11, 2000; in effect July 1, 2000. Approved by the Governor.]

AN ACT to amend and reenact sections three-a, thirteen, fourteen, fifteen, twenty-one, forty-two and forty-six, article ten, chapter five of the Code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto four new sections, designated sections twenty-seven-a, twenty-seven-b, twenty-seven-c and fifty-five; to amend and reenact sections two, two-a, three, four, five, nine, twelve,
thirteen, eighteen, nineteen, twenty-one, twenty-three, twenty-five and twenty-seven. article fourteen-d, chapter seven of said code; to further amend said article by adding thereto four new sections, designated sections nine-a, nine-b, nine-c and thirty-one; to amend and reenact sections twenty-six, twenty-seven, twenty-eight, twenty-nine and thirty-five, article two, chapter fifteen of said code; to further amend said article by adding thereto six new sections, designated sections forty-four, forty-five, forty-six, forty-seven, forty-eight and forty-nine; to amend and reenact sections two, three, five, fifteen and nineteen, article two-a of said chapter; to further amend said article by adding thereto five new sections, designated sections four-a, six-a, six-b, six-c and twenty; to amend article seven-a, chapter eighteen of said code by adding thereto six new sections, designated sections three-a, fourteen-b, twenty-eight-a, twenty-eight-b, twenty-eight-c and thirty-seven; to amend and reenact sections eleven, thirteen, seventeen, thirty and thirty-four of said article; to amend and reenact sections two, four, seven, twelve, thirteen and eighteen, article seven-b of said chapter; to further amend said article by adding thereto four new sections, designated sections eight-a, twelve-a, thirteen-b and nineteen; to amend and reenact sections one-a, three, four, six, six-a and fourteen, article nine, chapter fifty-one of said code; and to further amend said article by adding thereto five new sections, designated sections three-a, twelve-a, twelve-b, twelve-c and seventeen, all relating generally to the public employees retirement system, deputy sheriff retirement plan, state police death, disability and retirement fund, state police retirement system, state teachers retirement system, teachers defined contribution retirement system and retirement system for judges of courts of record; compliance of the public employees retirement system, deputy sheriff retirement plan, state police death, disability and retirement fund, state police retirement system, state teachers retirement system, teachers defined contribution retirement system and retirement system for judges of courts of record with the federal tax law qualification requirements of Section 401(a) and related sections of the Internal Revenue Code of 1986 as
applicable to governmental plans; definition of leased employees and clarification of ineligibility of leased employees to participate in these retirement systems; requirements relating to retirement plan loans for members in the deputy sheriff retirement plan and state teachers retirement system and provisions for the administration of those loans by the consolidated public retirement board; making technical corrections; eliminating certain annuity options in the deputy sheriff retirement system; clarifying that certain benefits in the deputy sheriff retirement system may not be reduced upon the death of a named beneficiary; replacing “base salary” with “annual compensation” as a factor in determining the amount of death benefits due a surviving spouse in the deputy sheriff retirement system; clarifying the amount to be paid in lieu of the standard burial benefit in certain cases in the deputy sheriff retirement system; permitting members of the state teachers retirement system the option to purchase service credit for time periods they were absent from work and receiving temporary total disability payments; setting forth cost to purchase such service credit in the state teachers retirement system; establishing applicable time periods; setting forth a window of time during which such purchase must occur; relating to the public employees retirement system; providing for “retroactive service” and “limited credited service”; providing for application of terms; providing for restrictions resulting from said application and making technical corrections; relating to the teachers’ retirement system; providing that certain members who are also members of the Legislature may make contributions to the plan for time spent serving in the Legislature; relating to public employees retirement system; clarifying that no less than ten days of service by any member may be credited as one month of service; clarifying that no member may receive more than one year of credited service for any calendar year; clarifying the definition of interim sessions; increasing the time limit to purchase retroactive service credit; clarifying that no interest be paid upon certain purchases of retroactive service credit; relating to the public employees retirement system; service credit; allowing transfer of service
with the state police; and requiring the member's employer to make certain employer contributions to the plan for the same time period and conforming reenacted sections to existing law with regard to all pension and retirement plans administered by the consolidated public retirement board.

Be it enacted by the Legislature of West Virginia:

That sections three-a, thirteen, fourteen, fifteen, twenty-one, forty-two and forty-six, article ten, chapter five 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 four new sections, designated sections twenty-seven-a, twenty-seven-b, twenty-seven-c and fifty-five; that sections two, two-a, three, four, five, nine, twelve, thirteen, eighteen, nineteen, twenty-one, twenty-three, twenty-five and twenty-seven, article fourteen-d, chapter seven of said code be amended and reenacted; that said article be further amended by adding thereto four new sections, designated sections nine-a, nine-b, nine-c and thirty-one; that sections twenty-six, twenty-seven, twenty-eight, twenty-nine and thirty-five, article two, chapter fifteen of said code be amended and reenacted; that said article be further amended by adding thereto six new sections, designated sections forty-four, forty-five, forty-six, forty-seven, forty-eight and forty-nine; that sections two, three, five, fifteen and nineteen, article two-a of said chapter be amended and reenacted; that said article be further amended by adding thereto five new sections, designated sections six-a, six-b, six-c and twenty; that article seven-a, chapter eighteen of said code be amended by adding thereto six new sections, designated sections three-a, fourteen-b, twenty-eight-a, twenty-eight-b, twenty-eight-c and thirty-seven; that sections eleven, thirteen, seventeen, thirty and thirty-four of said article be amended and reenacted; that sections two, four, seven, twelve, thirteen and eighteen, article seven-b of said chapter be amended and reenacted; that said article be further amended by adding thereto four new sections, designated sections eight-a, twelve-a, thirteen-b and nineteen; that sections one-a, three, four, six, six-a and fourteen,
article nine, chapter fifty-one of said code be amended and reenacted; and that said article be further amended by adding thereto five new sections, designated sections three-a, twelve-a, twelve-b, twelve-c and seventeen, all to read as follows:

Chapter

1. 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.

15. Public Safety.

18. Education.

51. Courts and Their Officers.

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 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-3a. Article to be liberally construed; supplements federal social security; federal qualification requirements.

§5-10-13. Actuarial investigations and valuations; specification of actuarial assumptions.

§5-10-14. Service credit; retroactive provisions.

§5-10-15. Military service credit; qualified military service.

§5-10-21. Deferred retirement and early retirement.

§5-10-27a. Federal law maximum benefit limitations.

§5-10-27b. Federal law minimum required distributions.

§5-10-27c. Direct rollovers.

§5-10-42. Fiscal or plan year of retirement system.

§5-10-46. Right to benefits not subject to execution, etc.; assignments prohibited; deductions for group insurance; setoffs for fraud; exception for certain domestic relations orders.

§5-10-55. Benefits not to be forfeited if system terminates.
§5-10-3a. Article to be liberally construed; supplements federal social security; federal qualification requirements.

(a) The provisions of this article shall be liberally construed so as to provide a general retirement system for the employees of the state herein made eligible for such retirement: Provided, That nothing in this article shall be construed as permitting any governmental unit, its officers or employees to substitute the retirement plan herein authorized for federal social security now in force in West Virginia.

(b) The purpose of this article is to provide a state pension plan which supplements the federal social security pension plan now in force and heretofore authorized by law for members of this retirement system.

(c) The retirement system is intended to meet the federal qualification requirements of Section 401(a) and related sections of the Internal Revenue Code as applicable to governmental plans. Notwithstanding any other provision of state law, the board shall administer the retirement system to fulfill this intent for the exclusive benefit of the members and their beneficiaries. Any provision of this article referencing or relating to such federal tax qualification requirements shall be effective as of the date required by federal law. The board may promulgate rules and amend or repeal conflicting rules in accordance with the authority granted to it pursuant to section one, article ten-d of this chapter to assure compliance with this section.

§5-10-13. Actuarial investigations and valuations; specification of actuarial assumptions.

(a) The board of trustees shall keep, or cause to be kept, such data as shall be necessary for the preparation of mortality, service and retirement tables and for the compilation of such
other data as shall be required for an actuarial valuation of the
assets and liabilities of the retirement system.

(b) Beginning in one thousand nine hundred sixty-six, and
in each five-year period thereafter, the actuary shall make
actuarial investigations into the experiences of the members,
retirants and beneficiaries of the retirement system. Based upon
such investigations, the board of trustees shall adopt for the
system rates of mortality, withdrawal from service, superannua-
tion retirement and disability retirement and salary scales for
final average salary.

(c) Beginning in one thousand nine hundred sixty-two, and
at least once in each three-year period thereafter, the actuary
shall make an actuarial valuation of the assets and liabilities of
the retirement system: Provided, That until the first actuarial
investigations are made, the valuations shall be based upon
decrement assumptions which are, in the opinion of the actuary,
applicable to the members, retirants and beneficiaries of the
system.

(d) Beginning in one thousand nine hundred sixty-two, the
actuary shall annually compute the annuity reserve liabilities
for annuities being paid retirants and beneficiaries.

(e) The board shall specify and adopt all actuarial assump-
tions for the system at its first meeting of every calendar year
or as soon thereafter as may be practicable, which assumptions
shall become part of the terms of the system.

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-14. Service credit; retroactive provisions.

(a) The board of trustees shall credit each member with the
prior service and contributing service to which he or she is
entitled based upon such rules as the board of trustees shall
from time to time adopt and based upon the following:
(1) In no event may less than ten days of service rendered by a member in any calendar month be credited as a month of service: Provided, That for employees of the state Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who have been or are so employed during regular sessions or during the interim between regular sessions in seven consecutive calendar years, service credit of one month shall be awarded for each ten days employed in the interim between regular sessions, which interim days shall be cumulatively calculated so that any ten days, regardless of calendar month or year, shall be calculated toward any award of one month of service credit;

(2) Except for hourly employees, ten or more months of service credit earned in any calendar year shall be credited as a year of service: Provided, That no more than one year of service may be credited to any member for all service rendered by him or her in any calendar year and no days may be carried over by a member from one calendar year to another calendar year where the member has received a full year credit for that year; and

(3) Service may be credited to a member who was employed by a political subdivision if his or her employment occurred within a period of thirty years immediately preceding the date the political subdivision became a participating public employer.

(b) The board of trustees shall grant service credit to employees of boards of health, the clerk of the House of Delegates and the clerk of the state Senate, or to any former and present member of the state teachers retirement system who have been contributing members for more than three years, for service previously credited by the state teachers retirement system and shall require the transfer of the member’s contribu-
tions to the system and shall also require a deposit, with interest, of any withdrawals of contributions any time prior to the member's retirement. Repayment of withdrawals shall be as directed by the board of trustees.

(c) Court reporters who are acting in an official capacity, although paid by funds other than the county commission or state auditor, may receive prior service credit for time served in that capacity.

(d) Employees of the state Legislature whose terms of employment are otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim time between regular sessions shall receive service credit for the time served in that capacity in accordance with the following. For purposes of this section the term "regular session" means day one through day sixty of a sixty-day legislative session or day one through day thirty of a thirty-day legislative session. Employees of the state Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim time between regular sessions and who have been or are employed during regular sessions or during the interim time between regular sessions in seven consecutive calendar years, as certified by the clerk of the houses in which the employee served, shall receive service credit of six months for all regular sessions served, as certified by the clerk of the houses in which the employee served, or shall receive service credit of three months for each regular thirty-day session served prior to one thousand nine hundred seventy-one, as certified by the clerk of the houses in which the employee served, and shall receive service credit of one month for each ten days served during the interim between regular sessions, which interim days shall be cumulatively calculated so that any ten days, regardless of calendar month or year, shall be calculated toward any award
of one month of service credit: Provided, That no more than
one year of service may be credited to any temporary legislative
employee for all service rendered by that employee in any
calendar year and no days may be carried over by a temporary
legislative employee from one calendar year to another calendar
year where the member has received a full year credit for that
year. Service credit awarded for legislative employment
pursuant to this section shall be used for the purpose of calcula-
ting that member’s retirement annuity, pursuant to section
twenty-two of this article, and determining eligibility as it
relates to credited service, notwithstanding any other provision
of this section. Certification of employment for a complete
legislative session and for interim days shall be determined by
the clerk of the houses in which the employee served, based
upon employment records. Service of fifty-five days of a
regular session constitutes an absolute presumption of service
for a complete legislative session, and service of twenty-seven
days of a thirty-day regular session occurring prior to one
thousand nine hundred seventy-one constitutes an absolute
presumption of service for a complete legislative session. Once
a legislative employee has been employed during regular
sessions for seven consecutive years or has become a full-time
employee of the Legislature, that employee shall receive the
service credit provided in this section for all regular and interim
sessions, and interim days worked by that employee, as
certified by the clerk of the houses in which the employee
served, regardless of when the session or interim legislative
employment occurred: Provided, however, That regular session
legislative employment for seven consecutive years may be
served in either or both houses of the Legislature.

Any employee may purchase retroactive service credit for
periods of employment in which contributions were not
deducted from the employee’s pay. In the purchase of service
credit for employment prior to the year one thousand nine
hundred eighty-nine in any department, including the Legisla-
ture, which operated from the general revenue fund and which was not expressly excluded from budget appropriations in which blanket appropriations were made for the state’s share of public employees’ retirement coverage in the years prior to the year one thousand nine hundred eighty-nine, the employee shall pay the employee’s share. Other employees shall pay the state’s share and the employee’s share to purchase retroactive service credit. Where an employee purchases service credit for employment which occurred after the year one thousand nine hundred eighty-eight, that employee shall pay for the employee’s share and the employer shall pay its share for the purchase of retroactive service credit: Provided, That no legislative employee and no current or former member of the Legislature may be required to pay any interest or penalty upon the purchase of retroactive service credit in accordance with the provisions of this section where the employee was not eligible to become a member during the years he or she is purchasing retroactive credit for or had the employee attempted to contribute to the system during the years he or she is purchasing retroactive service credit for and such contributions would have been refused by the board: Provided, however, That a legislative employee purchasing retroactive credit under this section does so within twenty-four months of becoming a member of the system or no later than the last day of December, two thousand five, whichever occurs last: Provided further, That once a legislative employee becomes a member of the retirement system, he or she may purchase retroactive service credit for any time he or she was employed by the Legislature and did not receive service credit. Any service credit purchased shall be credited as six months for each sixty-day session worked and three months for each thirty-day session worked, and credit for interim employment as provided in this subsection: And provided further, That this legislative service credit shall also be used for months of service in order to meet the sixty-month requirement for the payments of a temporary legislative employee member’s retirement annuity: And provided further,
That no legislative employee may be required to pay for any service credit beyond the actual time he or she worked regardless of the service credit which is credited to him or her pursuant to this section: And provided further, That any legislative employee may request a recalculation of his or her credited service to comply with the provisions of this section at any time.

Notwithstanding any provision to the contrary, the seven consecutive calendar years requirement and the service credit requirements set forth in this section shall be applied retroactively to all periods of legislative employment prior to the passage of this section, including any periods of legislative employment occurring before the seven consecutive calendar years referenced in this section.

The board of trustees shall grant service credit to any former or present member of the state police death, disability and retirement fund who has been a contributing member of this system for more than three years, for service previously credited by the state police death, disability and retirement fund if the member transfers all of his or her contributions to the state police death, disability and retirement fund to the system created in this article, including repayment of any amounts withdrawn any time from the state police death, disability and retirement fund by the member seeking the transfer allowed in this subsection: Provided, That there shall be added by the member to the amounts transferred or repaid under this paragraph an amount which shall be sufficient to equal the contributions he or she would have made had the member been under the public employees retirement system during the period of his or her membership in the state police death, disability and retirement fund plus interest at a rate determined by the board.

§5-10-15. Military service credit; qualified military service.

*Clerk's Note: This section was also amended by H. B. 4391 (Chapter 205), which passed prior to this act.*
(a)(1) In addition to any benefit provided by federal law, any member of the retirement system who has previously served in or enters the active service of the armed forces of the United States during any period of compulsory military service shall receive credited service for said time spent in the armed forces of the United States, not to exceed five years if such member:

(A) Has been honorably discharged from the armed forces;

(B) Substantiates by appropriate documentation or evidence his or her active military service and entry therein during any period of compulsory military service; and

(C) Pays to the members' deposit fund the amount he or she may have withdrawn therefrom, together with regular interest from the date of withdrawal to the date of repayment.

(2) Any member of the retirement system who enters the active service of the armed forces of the United States during any period of compulsory military service shall receive the credit provided by this section regardless of whether he or she was a public employee at the time of entering the military service.

(3) No member may receive the credit described in this section for any period for which the member has received credit under section ten-b of this article.

(b) In any case of doubt as to the period of service to be credited a member under the provisions of this section, the board of trustees shall have final power to determine such period.

(c) During the period of such armed service and until the member's return to the employ of a participating public employer, his or her contributions to the retirement system shall
be suspended and any credit balance remaining in the members’ deposit fund shall be accumulated at regular interest.

(d) Notwithstanding the preceding provisions of this section, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code. For purposes of this section, “qualified military service” has the same meaning as in Section 414(u) of the Internal Revenue Code. The retirement board is authorized to determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the retirement board in section one, article ten-d of chapter five, may promulgate rules relating to contributions, benefits and service credit to comply with Section 414(u) of the Internal Revenue Code.

*§5-10-21. Deferred retirement and early retirement.

(a) Any member who has five or more years of credited service in force, of which at least three years are contributing service, and who leaves the employ of a participating public employer prior to his or her attaining age sixty years for any reason except his or her disability retirement or death, shall be entitled to an annuity computed according to section twenty-two of this article, as that section was in force as of the date of his or her separation from the employ of a participating public employer: Provided, That he or she does not withdraw his or her accumulated contributions from the members’ deposit fund. His or her annuity shall begin the first day of the calendar month next following the month in which his or her application for same is filed with the board of trustees on or after his or her attaining age sixty-two years.

(b) Any member who qualifies for deferred retirement benefits in accordance with subsection (a) of this section, and has ten or more years of credited service in force and who has

*Clerk’s Note: This section was also amended by H. B. 4102 (Chapter 203), which passed prior to this act.
attained age fifty-five as of the date of his or her separation may, prior to the effective date of his or her retirement, but not thereafter, elect to receive the actuarial equivalent of his or her deferred retirement annuity as a reduced annuity commencing on the first day of any calendar month between his or her date of separation and his or her attainment of age sixty-two years and payable throughout his or her life.

(c) Any member who qualifies for deferred retirement benefits in accordance with subsection (a) of this section, and has twenty or more years of credited service in force, may elect to receive the actuarial equivalent of his or her deferred retirement annuity as a reduced annuity commencing on the first day of any calendar month between his or her fifty-fifth birthday and his or her attainment of age sixty-two years and payable throughout his or her life.

(d) Notwithstanding any of the other provisions of this section or of this article, except sections twenty-seven-a and twenty-seven-b, and pursuant to rules promulgated by the board, any member who has thirty or more years of credited service in force, at least three of which are contributing service, and who elects to take early retirement, which for the purposes of this subsection means retirement prior to age sixty, whether an active employee or a separated employee at the time of application, shall be entitled to the full computation of annuity according to section twenty-two of this article, as that section was in force as of the date of retirement application, but with the reduced actuarial equivalent of the annuity the member would have received if his or her benefit had commenced at age sixty when he or she would have been entitled to full computation of benefit without any reduction.

(e) Notwithstanding any of the other provisions of this section or of this article, except sections twenty-seven-a and twenty-seven-b of this article, any member of the retirement system may retire with full pension rights, without reduction of
§5-10-27a. Federal law maximum benefit limitations.

Notwithstanding any other provision of this article or state law, the board shall administer the retirement system in compliance with the limitations of Section 415 of the Internal Revenue Code and regulations promulgated thereunder to the extent applicable to governmental plans so that no annuity or other benefit provided under this system shall exceed those limitations. The extent to which any annuity or other benefit payable under this retirement system shall be reduced as compared to the extent to which an annuity, contributions or other benefits under any other defined benefit plans or defined contribution plans required to be taken into consideration under Section 415 of the Internal Revenue Code shall be reduced shall be determined by the board in a manner that shall maximize the aggregate benefits payable to the member. If the reduction is under this retirement system, the board shall advise affected members of any additional limitation on the annuities required by this section.

§5-10-27b. Federal law minimum required distributions.

The requirements of this section apply to any distribution of a member’s or beneficiary’s interest and take precedence over any inconsistent provisions of this code. This provision applies to plan years beginning after the thirty-first day of December, one thousand nine hundred eighty-six. Notwithstanding anything in this code to the contrary, the payment of benefits under this article shall be determined and made in accordance with Section 401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder. For this purpose, the following provisions apply:
(a) The payment of benefits under the retirement system to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under Section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary.

(b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the retirement system has been distributed, then the remaining portion of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death.

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the retirement system will be distributed by the thirty-first day of December of the calendar year containing the fifth anniversary of the member’s death, except as follows:

(1) If a member’s interest is payable to a beneficiary, distributions may be made over the life of that beneficiary or over a period certain not greater than the life expectancy of that beneficiary, commencing on or before the thirty-first day of December of the calendar year immediately following the calendar year in which the member died; or

(2) If the member’s beneficiary is the surviving spouse, the date distributions are required to begin shall be no later than the later of:

(A) The thirty-first day of December of the calendar year in which the member would have attained age seventy and one half; or
(B) The earlier of: (i) The thirty-first day of December of the calendar year following the calendar year in which the member died; or (ii) the thirty-first day of December of the calendar year following the calendar year in which the spouse died.

§5-10-27c. Direct rollovers.

(a) This section applies to distributions made on or after the first day of January, one thousand nine hundred ninety-three. Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee's election under this system, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution that is equal to at least five hundred dollars paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this section, the following definitions apply:

(1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any of the following: (i) Any distribution that is one of a series of substantially equal periodic payments not less frequently than annually made for the life or life expectancy of the distributee or the joint lives or the joint life expectancies of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; (ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; (iii) the portion of any distribution that is not includable in gross income determined without regard to the exclusion for net unrealized appreciation with respect to employer securities; (iv) any hardship distribution described in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code; and (v) any other distribution or distributions reasonably expected to total less than two hundred dollars during a year.
(2) “Eligible retirement plan” means an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code or a qualified plan described in Section 401(a) of the Internal Revenue Code that accepts the distributee’s eligible rollover distribution: Provided, That in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

(3) “Distributee” means an employee or former employee. In addition, the employee’s or former employee’s surviving spouse and the employee’s or former employee’s spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code with respect to governmental plans, are distributees with regard to the interest of the spouse or former spouse.

(4) “Direct rollover” means a payment by the retirement system to an eligible retirement plan.

(b) Nothing in this section may be construed as permitting rollovers into this system or any other system administered by the retirement board.

§5-10-42. Fiscal or plan year of retirement system.

The fiscal or plan year of the retirement system shall coincide with the fiscal year of the state.

§5-10-46. Right to benefits not subject to execution, etc.; assignments prohibited; deductions for group insurance; setoffs for fraud; exception for certain domestic relations orders.
The right of a person to any benefit provided for in this article shall not be subject to execution, attachment, garnishment, the operation of bankruptcy or insolvency laws, or other process whatsoever, nor shall any assignment thereof be enforceable in any court except that the benefits or contributions under this system shall be subject to "qualified domestic relations orders" as that term is defined in Section 414(p) of the Internal Revenue Code as applicable to governmental plans:

Provided, That should a member be covered by a group insurance or prepayment plan participated in by a participating public employer, and should he or she be permitted to, and elect to, continue such coverage as a retirant, he or she may authorize the board of trustees to have deducted from his or her annuity the payments required of him or her to continue coverage under such group insurance or prepayment plan: Provided, however, That a participating public employer shall have the right of setoff for any claim arising from embezzlement by, or fraud of, a member, retirant or beneficiary.

$5-10-55. Benefits not to be forfeited if system terminates.

If the retirement system is terminated or contributions are completely discontinued, the rights of all members to benefits accrued or contributions made to the date of such termination or discontinuance, to the extent then funded, are not forfeited.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-2. Definitions.
§7-14D-3. Creation and administration of West Virginia deputy sheriff's retirement system; specification of actuarial assumptions.
§7-14D-4. Article to be liberally construed; supplements federal social security; federal qualification requirements.
§7-14D-5. Members.
§7-14D-9. Retirement; commencement of benefits.
§7-14D-9a. Federal law maximum benefit limitations.
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§7-14D-9c. Direct rollovers.
§7-14D-12. Annuity options.
§7-14D-13. Refunds to certain members upon discharge or resignation, deferred
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§7-14D-18. Awards and benefits to surviving spouse — When member dies in
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§7-14D-23. Loans to members.
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certain qualified domestic relations orders.
§7-14D-27. Credit toward retirement for member’s prior military service; credit
toward retirement when member has joined armed forces in time of
armed conflict; qualified military service.
§7-14D-31. Benefits not forfeited if system terminates.

§7-14D-2. Definitions.

1 As used in this article, unless a federal law or regulation or
the context clearly requires a different meaning:

3 (a) “Accrued benefit” means on behalf of any member two
and one-quarter percent of the member’s final average salary
multiplied by the member’s years of credited service. A
member’s accrued benefit may not exceed the limits of Section
415 of the Internal Revenue Code and is subject to the provi-
sions of section nine-a of this article.

5 (b) “Accumulated contributions” means the sum of all
amounts deducted from the compensation of a member, or paid
on his or her behalf pursuant to article ten-c, chapter five of this
code, either pursuant to section seven of this article or section
twenty-nine, article ten, chapter five of this code as a result of
covered employment together with regular interest on the
deducted amounts.

6 (c) “Active military duty” means full-time active duty with
any branch of the armed forces of the United States, including
service with the national guard or reserve military forces when
the member has been called to active full-time duty and has
received no compensation during the period of that duty from any board or employer other than the armed forces.

(d) "Actuarial equivalent" means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the retirement board in accordance with the provisions of this article.

(e) "Annual compensation" means the wages paid to the member during covered employment within the meaning of Section 3401(a) of the Internal Revenue Code, but determined without regard to any rules that limit the remuneration included in wages based upon the nature or location of employment or services performed during the plan year plus amounts excluded under Section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense allowances, cash or noncash fringe benefits or both, deferred compensation and welfare benefits. Annual compensation for determining benefits during any determination period may not exceed one hundred fifty thousand dollars as adjusted for cost of living in accordance with Section 401(a)(17)(B) of the Internal Revenue Code.

(f) "Annual leave service" means accrued annual leave.

(g) "Annuity starting date" means the first day of the first period for which an amount is received as an annuity by reason of retirement.

(h) "Base salary" means a member's cash compensation exclusive of overtime from covered employment during the last twelve months of employment. Until a member has worked twelve months, annualized base salary is used as base salary.

(i) "Board" means the consolidated public retirement board created pursuant to article ten-d, chapter five of this code.

(j) "County commission" has the meaning ascribed to it in section one, article one, chapter seven of this code.
(k) "Covered employment" means either: (1) Employment as a deputy sheriff and the active performance of the duties required of a deputy sheriff; or (2) the period of time which active duties are not performed but disability benefits are received under section thirteen or fourteen of this article; or (3) concurrent employment by a deputy sheriff in a job or jobs in addition to his or her employment as a deputy sheriff where such secondary employment requires the deputy sheriff to be a member of another retirement system which is administered by the consolidated public retirement board pursuant to article ten-d of chapter five of this code: Provided, That the deputy sheriff contribute to the fund created in section six of this article the amount specified as the deputy sheriff’s contribution in section seven of this article.

(l) "Credited service" means the sum of a member’s years of service, active military duty, disability service and annual leave service.

(m) "Deputy sheriff" means an individual employed as a county law-enforcement deputy sheriff in this state and as defined by section two, article fourteen, chapter seven of this code.

(n) "Dependent child" means either:

(1) An unmarried person under age eighteen who is:

(A) A natural child of the member;

(B) A legally adopted child of the member;

(C) A child who at the time of the member’s death was living with the member while the member was an adopting parent during any period of probation; or

(D) A stepchild of the member residing in the member’s household at the time of the member’s death; or
(2) Any unmarried child under age twenty-three:
(A) Who is enrolled as a full-time student in an accredited college or university;
(B) Who was claimed as a dependent by the member for federal income tax purposes at the time of member’s death; and
(C) Whose relationship with the member is described in subparagraph (A), (B) or (C), paragraph (1) of this subdivision.

(o) “Dependent parent” means the father or mother of the member who was claimed as a dependent by the member for federal income tax purposes at the time of the member’s death.

(p) “Disability service” means service received by a member, expressed in whole years, fractions thereof or both, equal to one half of the whole years, fractions thereof, or both, during which time a member receives disability benefits under section fourteen or fifteen of this article.

(q) “Early retirement age” means age forty or over and completion of twenty years of service.

(r) “Effective date” means the first day of July, one thousand nine hundred ninety-eight.

(s) “Final average salary” means the average of the highest annual compensation received for covered employment by the member during any five consecutive plan years within the member’s last ten years of service. If the member did not have annual compensation for the five full plan years preceding the member’s attainment of normal retirement age and during that period the member received disability benefits under section fourteen or fifteen of this article then “final average salary” means the average of the monthly salary determined paid to the member during that period as determined under section seventeen of this article multiplied by twelve.
“Fund” means the West Virginia deputy sheriff retirement fund created pursuant to section six of this article.

(a) “Hour of service” means:

(1) Each hour for which a member is paid or entitled to payment for covered employment during which time active duties are performed. These hours shall be credited to the member for the plan year in which the duties are performed; and

(2) Each hour for which a member is paid or entitled to payment for covered employment during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of absence, or any combination thereof, and without regard to whether the employment relationship has terminated. Hours under this paragraph shall be calculated and credited pursuant to West Virginia division of labor rules. A member will not be credited with any hours of service for any period of time he or she is receiving benefits under section fourteen or fifteen of this article; and

(3) Each hour for which back pay is either awarded or agreed to be paid by the employing county commission, irrespective of mitigation of damages. The same hours of service shall not be credited both under paragraph (1) or (2) of this subdivision and under this paragraph. Hours under this paragraph shall be credited to the member for the plan year or years to which the award or agreement pertains, rather than the plan year in which the award, agreement or payment is made.

(v) “Member” means a person first hired as a deputy sheriff after the effective date of this article, as defined in subsection (r) of this section, or a deputy sheriff first hired prior to the effective date and who elects to become a member pursuant to section five or section seventeen of this article. A member shall
remain a member until the benefits to which he or she is entitled under this article are paid or forfeited.

(w) "Monthly salary" means the portion of a member's annual compensation which is paid to him or her per month.

(x) "Normal form" means a monthly annuity which is one twelfth of the amount of the member's accrued benefit which is payable for the member's life. If the member dies before the sum of the payments he or she receives equals his or her accumulated contributions on the annuity starting date, the named beneficiary shall receive in one lump sum the difference between the accumulated contributions at the annuity starting date and the total of the retirement income payments made to the member.

(y) "Normal retirement age" means the first to occur of the following:

1. Attainment of age fifty years and the completion of twenty or more years of service;
2. While still in covered employment, attainment of at least age fifty years and when the sum of current age plus years of service equals or exceeds seventy years;
3. While still in covered employment, attainment of at least age sixty years and completion of five years of service; or
4. Attainment of age sixty-two years and completion of five or more years of service.

(z) "Partially disabled" means a member's inability to engage in the duties of deputy sheriff by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve months. A member may be determined partially disabled for the
purposes of this article and maintain the ability to engage in other gainful employment which exists within the state but which ability would not enable him or her to earn an amount at least equal to two thirds of the average annual compensation earned by all active members of this plan during the plan year ending as of the most recent thirtieth day of June, as of which plan data has been assembled and used for the actuarial valuation of the plan.

(aa) “Public employees retirement system” means the West Virginia public employee’s retirement system created by article ten, chapter five of this code.

(bb) “Plan” means the West Virginia deputy sheriff death, disability and retirement plan established by this article.

(cc) “Plan year” means the twelve-month period commencing on the first day of July of any designated year and ending the following thirtieth day of June.

(dd) “Regular interest” means the rate or rates of interest per annum, compounded annually, as the board adopts in accordance with the provisions of this article.

(ee) “Retirement income payments” means the annual retirement income payments payable under the plan.

(ff) “Spouse” means the person to whom the member is legally married on the annuity starting date.

(gg) “Surviving spouse” means the person to whom the member was legally married at the time of the member’s death and who survived the member.

(hh) “Totally disabled” means a member’s inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be
expected to result in death or that has lasted or can be expected
to last for a continuous period of not less than twelve months.

For purposes of this subdivision:

(1) A member is totally disabled only if his or her physical
or mental impairment or impairments is so severe that he or she
is not only unable to perform his or her previous work as a
deputy sheriff but also cannot, considering his or her age,
education and work experience, engage in any other kind of
substantial gainful employment which exists in the state
regardless of whether: (A) The work exists in the immediate
area in which the member lives; (B) a specific job vacancy
exists; or (C) the member would be hired if he or she applied
for work.

(2) “Physical or mental impairment” is an impairment that
results from an anatomical, physiological or psychological
abnormality that is demonstrated by medically accepted clinical
and laboratory diagnostic techniques.

A member’s receipt of social security disability benefits
creates a rebuttable presumption that the member is totally
disabled for purposes of this plan. Substantial gainful employ-
ment rebuts the presumption of total disability.

(ii) “Year of service”. A member shall, except in his or her
first and last years of covered employment, be credited with
year of service credit based upon the hours of service performed
as covered employment and credited to the member during the
plan year based upon the following schedule:

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<tr>
<th>Hours of Service</th>
<th>Year of Service Credited</th>
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<tr>
<td>Less than 500</td>
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<td>500 to 999</td>
<td>1/3</td>
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<td>1,000 to 1,499</td>
<td>2/3</td>
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</tbody>
</table>
During a member’s first and last years of covered employment, the member shall be credited with one-twelfth of a year of service for each month during the plan year in which the member is credited with an hour of service. A member is not entitled to credit for years of service for any time period during which he or she received disability payments under section fourteen or fifteen of this article. Except as specifically excluded, years of service include covered employment prior to the effective date.

Years of service which are credited to a member prior to his or her receipt of accumulated contributions upon termination of employment pursuant to section thirteen of this article or section thirty, article ten, chapter five of this code, shall be disregarded for all purposes under this plan unless the member repays the accumulated contributions with interest pursuant to section twelve of this article or had prior to the effective date made the repayment pursuant to section eighteen, article ten, chapter five of this code.

(jj) “Required beginning date” means the first day of April of the calendar year following the later of: (i) The calendar year in which the member attains age seventy and one-half; or (ii) the calendar year in which he or she retires or otherwise separates from covered employment.


Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States, unless a different meaning is clearly required. Any reference in this article to the Internal Revenue Code means the Internal Revenue Code of 1986, as amended.
§7-14D-3. Creation and administration of West Virginia deputy sheriff's retirement system; specification of actuarial assumptions.

There is hereby created the West Virginia deputy sheriff's retirement system. The purpose of this system is to provide for the orderly retirement of deputy sheriffs who become superannuated because of age or permanent disability and to provide certain survivor death benefits. The retirement system constitutes a body corporate. All business of the system shall be transacted in the name of the West Virginia deputy sheriff's retirement system. The board shall specify and adopt all actuarial assumptions for the plan at its first meeting of every calendar year or as soon thereafter as may be practicable, which assumptions shall become part of the plan.

§7-14D-4. Article to be liberally construed; supplements federal social security; federal qualification requirements.

(a) The provisions of this article shall be liberally construed so as to provide a general retirement system for deputy sheriffs eligible to retire under the provisions of this plan. Nothing in this article may be construed to permit a county to substitute this plan for federal social security now in force in West Virginia.

(b) The board shall administer the plan in accordance with its terms and may construe the terms and determine all questions arising in connection with the administration, interpretation and application of the plan. The board may sue and be sued, contract and be contracted with and conduct all the business of the system in the name of the plan. The board may employ those persons it considers necessary or desirable to administer the plan. The board shall administer the plan for the exclusive benefit of the members and their beneficiaries subject to the specific provisions of the plan.
(c) The plan is intended to meet the federal qualification requirements of Section 401(a) and related sections of the Internal Revenue Code as applicable to governmental plans. Notwithstanding any other provision of state law, the board shall administer the plan to fulfill this intent for the exclusive benefit of the members and their beneficiaries. Any provision of this article referencing or relating to these federal qualification requirements shall be effective as of the date required by federal law. The board may promulgate rules and amend or repeal conflicting rules in accordance with the authority granted to the board pursuant to section one, article ten-d of chapter five to assure compliance with the requirements of this section.

§7-14D-5. Members.

(a) Any deputy sheriff first employed by a county in covered employment after the effective date of this article shall be a member of this retirement system and plan and does not qualify for membership in any other retirement system administered by the board, so long as he or she remains employed in covered employment.

(b) Any deputy sheriff employed in covered employment on the effective date of this article shall within six months of that effective date notify in writing both the county commission in the county in which he or she is employed and the board of his or her desire to become a member of the plan: Provided, That this time period is extended to the thirtieth day of January, one thousand nine hundred ninety-nine, in accordance with the decision of the supreme court of appeals in West Virginia Deputy Sheriffs' Association, et al v. James L. Sims, et al, No. 25212: Provided, however, That any deputy sheriff employed in covered employment on the effective date of this article has an additional time period consisting of the ten-day period following the day after which the amended provisions of this section become law to notify in writing both the county commission in the county in which he or she is employed and
the board of his or her desire to become a member of the plan. Any deputy sheriff who elects to become a member of the plan ceases to be a member or have any credit for covered employ-ment in any other retirement system administered by the board and shall continue to be ineligible for membership in any other retirement system administered by the board so long as the deputy sheriff remains employed in covered employment in this plan: Provided further, That any deputy sheriff who elects during the time period from the first day of July, one thousand nine hundred ninety-eight, to the thirtieth day of January, one thousand nine hundred ninety-nine, or who so elects during the ten-day time period occurring immediately following the day after the day the amendments made during the one thousand nine hundred ninety-nine legislative session become law, to transfer from the public employees retirement system to the plan created in this article shall contribute to the plan created in this article at the rate set forth in section seven of this article retroactive to the first day of July, one thousand nine hundred ninety-eight. Any deputy sheriff who does not affirmatively elect to become a member of the plan continues to be eligible for any other retirement system as is from time to time offered to other county employees but is ineligible for this plan regardless of any subsequent termination of employment and rehire.

(c) Any deputy sheriff who was employed as a deputy sheriff prior to the effective date, but was not employed on the effective date of this article, shall become a member upon rehire as a deputy sheriff. For purposes of this section, the member’s years of service and credited service prior to the effective date shall not be counted for any purposes under this plan unless: (1) The deputy sheriff has not received the return of his or her accumulated contributions in the public employees retirement fund system pursuant to section thirty, article ten, chapter five of this code; or (2) the accumulated contributions returned to the member from the public employees retirement system have been repaid pursuant to section twelve of this
article. If the conditions of subdivision (1) or (2) of this subsection are met, all years of the deputy sheriff’s covered employment shall be counted as years of service for the purposes of this article. Each transferring deputy sheriff shall be given credited service for the purposes of this article for all covered employment transferred from the public employees retirement system regardless of whether such credited service (as that term is defined in section two, article ten, chapter five of this code) was earned as a deputy sheriff. All service in the public employees retirement system accrued by a transferring deputy sheriff shall be transferred into the plan created by this article and the transferring deputy sheriff shall be given the same credit for the purposes of this article for all such covered service which is transferred from the public employees retirement system as that transferring deputy sheriff would have received from the public employees retirement system if such transfer had not occurred. In connection with each deputy sheriff receiving credit for prior employment provided in this subsection, a transfer from public employees retirement system to this plan shall be made pursuant to the procedures described in section eight of this article.

(d) Once made, the election made under this section is irrevocable. All deputy sheriffs first employed after the effective date and deputy sheriffs electing to become members as described in this section shall be members as a condition of employment and shall make the contributions required by section seven of this article.

(e) Notwithstanding any other provisions of this article, any individual who is a leased employee shall not be eligible to participate in the plan. For purposes of this plan, a “leased employee” means any individual who performs services as an independent contractor or pursuant to an agreement with an employee leasing organization or similar organization. If a
question arises regarding the status of an individual as a leased employee, the board has final power to decide the question.

§7-14D-9. Retirement; commencement of benefits.

A member may retire and commence to receive retirement income payments on the first day of the calendar month coincident with or next following the later of the date the member ceases employment and the date the member attains early or normal retirement age, in an amount as provided under section eleven of this article, by filing with the board his or her voluntary petition in writing for retirement: Provided, That retirement income payments under this plan shall be subject to the provisions of section nine-b of this article. Upon receipt of the petition, the board shall promptly provide the member with an explanation of his or her optional forms of retirement benefits and upon receipt of properly executed forms from the member, the board shall process member's request for and commence payments as soon as administratively feasible.

§7-14D-9a. Federal law maximum benefit limitations.

Notwithstanding any other provision of this article or state law, the board shall administer the retirement system in compliance with the limitations of Section 415 of the Internal Revenue Code and regulations under that section to the extent applicable to governmental plans so that no annuity or other benefit provided under this system shall exceed those limitations. The extent to which any annuity or other benefit payable under this retirement system shall be reduced as compared with the extent to which an annuity, contributions or other benefits under any other defined benefit plans or defined contribution plans required to be taken into consideration under Section 415 of the Internal Revenue Code shall be reduced shall be determined by the board in a manner that shall maximize the aggregate benefits payable to the member. If the reduction is under this retirement system, the board shall advise affected
members of any additional limitation on the annuities required by this section.

§7-14D-9b. Federal law minimum required distributions.

The requirements of this section apply to any distribution of a member’s or beneficiary’s interest and take precedence over any inconsistent provisions of this plan. This section applies to plan years beginning after the thirty-first day of December, one thousand eight hundred eighty-six. Notwithstanding anything in the plan to the contrary, the payment of benefits under this article shall be determined and made in accordance with Section 401(a)(9) of the Internal Revenue Code and the regulations thereunder. For this purpose, the following provisions apply:

(a) The payment of benefits under the plan to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under Section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary.

(b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the plan has been distributed, then the remaining portion of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death.

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the plan shall be distributed by the thirty-first day of December of the calendar
year containing the fifth anniversary of the member's death, except as follows:

(1) If a member's interest is payable to a beneficiary, distributions may be made over the life of that beneficiary or over a period certain not greater than the life expectancy of the beneficiary, commencing on or before the thirty-first of December of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's beneficiary is the surviving spouse, the date distributions are required to begin shall be no later than the later of:

(A) The thirty-first day of December of the calendar year in which the member would have attained age seventy and one-half; or

(B) The earlier of: (i) The thirty-first day of December of the calendar year following the calendar year in which the member died, or (ii) the thirty-first day of December of the calendar year following the calendar year in which the spouse died.

§7-14D-9c. Direct rollovers.

(a) This section applies to distributions made on or after the first day of January, one thousand nine hundred ninety-three. Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee's election under this plan, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution that is equal to at least five hundred dollars paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this section, the following definitions apply:
(1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any of the following: (i) Any distribution that is one of a series of substantially equal periodic payments not less frequently than annually made for the life or life expectancy of the distributee or the joint lives or the joint life expectancies of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; (ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; (iii) the portion of any distribution that is not includable in gross income determined without regard to the exclusion for net unrealized appreciation with respect to employer securities; (iv) any hardship distribution described in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code; and (v) any other distribution or distributions reasonably expected to total less than two hundred dollars during a year.

(2) "Eligible retirement plan" means an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code or a qualified plan described in Section 401(a) of the Internal Revenue Code that accepts the distributee's eligible rollover distribution: Provided, That in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

(3) "Distributee" means an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the
Internal Revenue Code with respect to governmental plans, are
distributees with regard to the interest of the spouse or former
spouse.

(4) “Direct rollover” means a payment by the plan to the
eligible retirement plan.

(b) Nothing in this section shall be construed as permitting
rollovers to this plan or any other retirement system adminis-
tered by the board.

§7-14D-12. Annuity options.

Prior to the effective date of retirement, but not thereafter,
a member may elect to receive retirement income payments in
the normal form, or the actuarial equivalent of the normal form
from the following options:

(a) Option A — Joint and Survivor Annuity. — A life
annuity payable during the joint lifetime of the member and his
or her beneficiary who is a natural person with an insurable
interest in the member’s life. Upon the death of either the
member of his or her beneficiary, the benefit shall continue as
a life annuity to the survivor in an amount equal to fifty percent,
sixty-six and two-thirds percent, seventy-five percent or one
hundred percent of the amount paid while both were living as
selected by the member. If the retiring member is married, the
spouse shall sign a waiver of benefit rights if the beneficiary is
to be other than the spouse.

(b) Option B — Contingent Joint and Survivor Annuity. —
A life annuity payable during the joint lifetime of the member
and his or her beneficiary who must be a natural person with an
insurable interest in the member’s life. Upon the death of the
member, the benefit shall continue as a life annuity to the
beneficiary in an amount equal to fifty percent, sixty-six and
two-thirds percent, seventy-five percent or one hundred percent
of the amount paid while both were living as selected by the
member. If the beneficiary dies first, the monthly amount of benefits may not be reduced, but shall be paid at the amount that was in effect before the death of the beneficiary. If the retiring member is married, the spouse shall sign a waiver of benefit rights if the beneficiary is to be other than the spouse.

(c) **Option C — Ten Years Certain and Life Annuity.** — A life annuity payable during the member’s lifetime but in any event for a minimum of ten years. If the member dies before the expiration of ten years, the remaining payments shall be made to a designated beneficiary, if any, or otherwise to the member’s estate.

(d) **Option D — Level Income Annuity.** — A life annuity payable monthly in an increased amount “A” from the time of retirement until the member is social security retirement age, and then a lesser amount “B” payable for the member’s lifetime thereafter, with these amounts computed actuarially to satisfy the following two conditions:

(1) **Actuarial equivalence.** — The actuarial present value at the date of retirement of the member’s annuity if taken in the normal form must equal the actuarial present value of the term life annuity in amount “A” plus the actual present value of the deferred life annuity in amount “B”; and

(2) **Level income.** — The amount “A” equals the amount “B” plus the amount of the member’s estimated monthly social security primary insurance amount that would commence at the date amount “B” becomes payable. For this calculation, the primary insurance amount is estimated when the member applies for retirement, using social security law then in effect, using assumptions established by the board.

In the case of a member who has elected the options set forth in subdivisions (a) and (b) of this section, respectively, and whose beneficiary dies prior to the member’s death, the
member may name an alternative beneficiary. If an alternative beneficiary is named within eighteen months following the death of the prior beneficiary, the benefit shall be adjusted to be the actuarial equivalent of the benefit the member is receiving just after the death of the member’s named beneficiary. If the election is not made until eighteen months after the death of the prior beneficiary, the amount shall be reduced so that it is only ninety percent of the actuarial equivalent of the benefit the member is receiving just after the death of the member’s named beneficiary.

§7-14D-13. Refunds to certain members upon discharge or resignation; deferred retirement; forfeitures.

(a) Any member who terminates covered employment and is not eligible to receive disability benefits under this article is, by written request filed with the board, entitled to receive from the fund the member’s accumulated contributions. Except as provided in subsection (b) of this section, upon withdrawal the member shall forfeit his or her accrued benefit and cease to be a member.

(b) Any member who withdraws accumulated contributions from either this plan or the public employees retirement system and thereafter becomes reemployed in covered employment shall not receive any credited service for the prior employment unless following his or her return to covered employment, the member redeposits in the fund the amount of the accumulated contributions, together with interest on the accumulate contributions at the rate determined by the board from the date of withdrawal to the date of redeposit. Upon repayment he or she shall receive the same credit on account of his or her former service as if no refund had been made. The repayment shall be made in a lump sum within sixty months of the deputy sheriff’s reemployment or if later, within sixty months of the effective date of this article.
(c) Every member who completes sixty months of covered employment is eligible, upon cessation of covered employment, to either withdraw his or her accumulated contributions in accordance with subsection (a) of this section, or to choose not to withdraw his or her accumulated contribution and to receive retirement income payments upon attaining early or normal retirement age.

(d) Notwithstanding any other provision of this article, forfeitures under the plan shall not be applied to increase the benefits any member would otherwise receive under the plan.

§7-14D-18. Awards and benefits to surviving spouse — When member dies in performance of duty, etc.

(a) The surviving spouse of any member who, after the effective date of this article while in covered employment, has died or dies by reason of injury, illness or disease resulting from an occupational risk or hazard inherent in or peculiar to the service required of members, while the member was or is engaged in the performance of his or her duties as a deputy sheriff, or the survivor spouse of a member who dies from any cause while receiving benefits pursuant to section fourteen of this article, is entitled to receive and shall be paid from the fund benefits as determined in subsection (b) of this section: To the surviving spouse annually, in equal monthly installments during his or her lifetime an amount equal to the greater of: (i) Two thirds of the annual compensation received in the preceding twelve-month period by the deceased member; or (ii) if the member dies after his or her early or normal retirement age, the monthly amount which the spouse would have received had the member retired the day before his or her death, elected a one hundred percent joint and survivor annuity with the spouse as the joint annuitant, and then died.

(b) Benefits for a surviving spouse received under this section, section twenty and section twenty-one of this article are
in lieu of receipt of any other benefits under this article for the spouse or any other person or under the provisions of any other state retirement system based upon the member’s covered employment.

§7-14D-19. Same — When member dies from nonservice-connected causes.

(a) In any case where a member who has been a member for at least ten years, while in covered employment after the effective date of this article, has died or dies from any cause other than those specified in section eighteen of this article and not due to vicious habits, intemperance or willful misconduct on his or her part, the fund shall pay annually in equal monthly installments to the surviving spouse during his or her lifetime, a sum equal to the greater of: (i) One half of the annual compensation received in the preceding twelve-month employment period by the deceased member; or (ii) if the member dies after his or her early or normal retirement age, the monthly amount which the spouse would have received had the member retired the day before his or her death, elected a one hundred percent joint and survivor annuity with the spouse as the joint annuitant, and then died. Where the member is receiving disability benefits under section fourteen of this article at the time of his or her death, the most recent monthly compensation determined under section seventeen of this article shall be substituted for the annual compensation in (i) of this section.

(b) Benefits for a surviving spouse received under this section, section twenty and section twenty-one of this article are in lieu of receipt of any other benefits under this article for the spouse or any other person or under the provisions of any other state retirement system based upon the member’s covered employment.

Any member who dies as a result of any service related illness or injury after the effective date is entitled to a lump sum burial benefit of five thousand dollars. If the member is married, the burial benefit shall be paid to the member’s spouse. If the member is not married, the burial benefit shall be paid to the member’s estate for the purposes of paying burial expenses, settling the member’s final affairs, or both. Any unspent balance shall be distributed as a part of the member’s estate. If the member is not entitled to a death benefit under sections eighteen and nineteen of this article, then if greater than five thousand dollars, the amount payable to the member’s estate shall be his or her accumulated contributions.

§7-14D-23. Loans to members.

(a) A member who is not yet receiving disability or retirement income benefits from the plan may borrow from the plan no more than one time in any year an amount up to one half of his or her accumulated contributions, but not less than five hundred dollars nor more than eight thousand dollars: Provided, That the maximum amount of any loan when added to the outstanding balance of all other loans shall not exceed the lesser of the following: (1) Fifty thousand dollars reduced by the excess (if any) of the highest outstanding balance of loans to the member on the date on which the loan is made; or (2) fifty percent of his or her accumulated contributions. No loan may be made from the plan if the board determines that the loans constitute more than fifteen percent of the amortized cost value of the assets of the plan as of the last day of the preceding plan year. The board may discontinue the loans any time it determines that cash flow problems might develop as a result of the loans. Each loan shall be repaid through monthly installments over periods of six through sixty months and carry interest on the unpaid balance and an annual effective interest rate that is two hundred basis points higher than the most recent rate of interest used by the board for determining actuarial
Monthly loan payments shall be calculated to be as nearly equal as possible with all but the final payment being an equal amount. An eligible member may make additional loan payments or pay off the entire loan balance at any time without incurring any interest penalty. At the member’s option, the monthly loan payment may include a level premium sufficient to provide declining term insurance with the plan as beneficiary to repay the loan in full upon the member’s death. If a member declines the insurance and dies before the loan is repaid, the unpaid balance of the loan shall be deducted from the lump sum insurance benefit payable under section twenty-one of this article.

(b) A member with an unpaid loan balance who wishes to retire may have the loan repaid in full by accepting retirement income payments reduced by deducting from the actuarial reserve for the accrued benefit the amount of the unpaid balance and then converting the remaining of the reserve to a monthly pension payable in the form of the annuity desired by the member.

(c) The entire unpaid balance of any loan, and interest due thereon, shall at the option of the retirement board become due and payable without further notice or demand upon the occurrence with respect to the borrowing member of any of the following events of default: (1) Any payment of principal and accrued interest on a loan remains unpaid after the same become due and payable under the terms of the loan or after such grace period as may be established in the discretion of the retirement board; (2) the borrowing member attempts to make an assignment for the benefit of creditors of his or her benefit under the retirement system; or (3) any other event of default set forth in rules promulgated by the board pursuant to the authority granted in section one, article ten-d, chapter five of this code.
(d) Loans shall be evidenced by such form of obligations
and shall be made upon such additional terms as to default,
prepayment, security, and otherwise as the retirement board
may determine.

§7-14D-25. Exemption from taxation, garnishment and other
process; exception for certain qualified domestic
relations orders.

The moneys in the fund and the right of a member, spouse
or other beneficiary to benefits under this article, to the return
of contributions, or to any retirement, death or disability
payments under the provisions of this article, are exempt from
any state or municipal tax; are not subject to execution,
garnishment, attachment or any other process whatsoever with
the exception that the benefits or contributions under the system
shall be subject to “qualified domestic relations orders” as that
term is defined in Section 414(p) of the Internal Revenue Code
with respect to governmental plans, and are unassignable except
as is provided in this article.

§7-14D-27. Credit toward retirement for member’s prior military
service; credit toward retirement when member
has joined armed forces in time of armed conflict;
qualified military service.

(a) Any member who has previously served on active
military duty is entitled to receive additional years of service
for the purpose of determining his or her years of credited
service for a period equal to the active military duty not to
exceed five years, subject to the following:

(1) That he or she has been honorably discharged from the
armed forces;

(2) That he or she substantiates by appropriate documenta-
tion or evidence his or her period of active military duty; and
(3) That he or she is receiving no benefits from any other retirement system for his or her active military duty.

(b) In addition, any member who while in covered employ-
ment was commissioned, enlisted or inducted into the armed forces of the United States or, being a member of the reserve officers' corps, was called to active duty in the armed forces between the first day of September, one thousand nine hundred forty, and the close of hostilities in World War II, or between the twenty-seventh day of June, one thousand nine hundred fifty, and the close of the armed conflict in Korea on the twenty-seventh day of July, one thousand nine hundred fifty-three, between the first day of August, one thousand nine hundred sixty-four, and the close of the armed conflict in Vietnam, or during any other period of armed conflict by the United States whether sanctioned by a declaration of war by congress or by executive or other order of the president, is entitled to and shall receive credited service, for a period equal to the full time that he or she has or, pursuant to that commis-
sion, enlistment, induction or call, shall have served with the armed forces subject to the following:

(1) That he or she has been honorably discharged from the armed forces;

(2) That within ninety days after honorable discharge from the armed forces, he or she presented himself or herself to the county commission and offered to resume service as a deputy sheriff; and

(3) That he or she has made no voluntary act, whether by reenlistment, waiver of discharge, acceptance of commission or otherwise, to extend or participate in extension of the period of service with the armed forces beyond the period of service for which he or she was originally commissioned, enlisted, inducted or called.
(c) The total amount of service allowable under subsections (a) and (b) of this section may not exceed five years.

(d) Any service credit allowed under this section may be credited one time only for each deputy sheriff, regardless of any changes in job title or responsibilities.

(e) Notwithstanding the preceding provisions of this section, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code. For purposes of this section, “qualified military service” has the same meaning as in Section 414(u) of the Internal Revenue Code. The retirement board is authorized to determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the retirement board in section one, article ten-d, chapter five of this code, may promulgate rules relating to contributions, benefits and service credit to comply with Section 414(u) of the Internal Revenue Code.

§7-14D-31. Benefits not forfeited if system terminates.

If the retirement system is terminated or contributions are completely discontinued, the rights of all members to benefits accrued or contributions made to the date of such termination or discontinuance, to the extent then funded, are not forfeited.

CHAPTER 15. PUBLIC SAFETY.

Article 2. West Virginia State Police.

2A. West Virginia State Police Retirement System.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-26. Continuation of death, disability and retirement fund; designating the consolidated public retirement board as administrator of fund

§15-2-27. Retirement; awards and benefits; leased employees.
§15-2-28. Credit toward retirement for member’s prior military service; credit toward retirement when member has joined armed forces in time of armed conflict; qualified military service.


§15-2-35. Same - When member dies after retirement or after serving twenty years.

§15-2-44. Federal law maximum benefit limitations.

§15-2-45. Federal law minimum required distributions.

§15-2-46. Direct rollovers.

§15-2-47. Federal qualification requirements.


§15-2-49. Benefits not forfeited if system terminates.

§15-2-26. Continuation of death, disability and retirement fund; designating the consolidated public retirement board as administrator of fund.

(a) There shall be continued the death, disability and retirement fund heretofore created for the benefit of members of the division of public safety and any dependent of a retired or deceased member thereof.

(b) There shall be deducted from the monthly payroll of each member of the division of public safety and paid into such fund six percent of the amount of his or her salary: Provided, that beginning on the first day of July, one thousand nine hundred ninety-four, there shall be deducted from the monthly payroll of each member and paid into the fund seven and one-half percent of the amount of his or her salary: Provided, however, That on and after the first day of July, one thousand nine hundred ninety-five, there shall be deducted from the monthly payroll of each member and paid into the fund nine percent of the amount of his or her salary. An additional twelve percent of the monthly salary of each member of the division shall be paid by the state of West Virginia monthly into such fund out of the annual appropriation for the division: Provided further, That beginning on the first day of July, one thousand nine hundred ninety-five, the state shall pay thirteen percent of the monthly salary of each member into the fund: And provided further, That beginning on the first day of July, one thousand
nine hundred ninety-six, the state shall pay fourteen percent of
the monthly salary of each member into the fund: *And provided*
*further*, That on and after the first day of July, one thousand
nine hundred ninety-seven, the state shall pay fifteen percent of
the monthly salary of each member into the retirement fund.
There shall also be paid into the fund amounts that have
previously been collected by the superintendent of the division
of public safety on account of payments to members for court
attendance and mileage, rewards for apprehending wanted
persons, fees for traffic accident reports and photographs, fees
for criminal investigation reports and photographs, fees for
criminal history record checks, fees for criminal history record
reviews and challenges or from any other sources designated by
the superintendent. All moneys payable into the fund shall be
deposited in the state treasury and the treasurer and auditor
shall keep a separate account thereof on their respective books.

(c) Notwithstanding any other provisions of this article,
forfeitures under the fund shall not be applied to increase the
benefits any member would otherwise receive under the fund.

(d) The moneys in this fund, and the right of a member to
a retirement allowance, to the return of contributions, or to any
benefit under the provisions of this article, are hereby exempt
from any state or municipal tax; shall not be subject to execution,
garnishment, attachment or any other process whatsoever,
with the exception that the benefits or contributions under the
fund shall be subject to “qualified domestic relations orders” as
that term is defined in Section 414(p) of the Internal Revenue
Code with respect to governmental plans; and shall be
unassignable except as is provided in this article. The death,
disability and retirement fund shall be administered by the
consolidated public retirement board created pursuant to article
ten-d, chapter five of this code.

(e) All moneys paid into and accumulated in the death,
disability and retirement fund, except such amounts as shall be
§15-2-27. Retirement; awards and benefits; leased employees.

(a) The retirement board shall retire any member of the division of public safety when the member has both attained the age of fifty-five years and completed twenty-five years of service as a member of the division, including military service credit granted under the provisions of section twenty-eight of this article.

(b) The retirement board shall retire any member of the division of public safety who has lodged with the secretary of the consolidated public retirement board his or her voluntary petition in writing for retirement, and:

(1) Has or shall have completed twenty-five years of service as a member of the division (including military service credit granted under the provisions of section twenty-eight of this article);

(2) Has or shall have attained the age of fifty years and has or shall have completed twenty years of service as a member of the division (excluding military service credit granted under section twenty-eight of this article); or

(3) Being under the age of fifty years has or shall have completed twenty years of service as a member of the division (excluding military service credit granted under section twenty-eight of this article).

(c) When the retirement board retires any member under any of the provisions of this section, the board shall, by order in writing, make an award directing that the member shall be entitled to receive annually and that there shall be paid to the member from the death, disability and retirement fund in equal monthly installments during the lifetime of the member while designated or set aside by the awards, shall be invested by the state board of investments as provided by law.
in status of retirement one or the other of two amounts, whichever is the greater:

(1) An amount equal to five and one-half percent of the aggregate of salary paid to the member during the whole period of service as a member of the division of public safety; or

(2) The sum of six thousand dollars.

When a member has or shall have served twenty years or longer but less than twenty-five years as a member of the division and shall be retired under any of the provisions of this section before he or she shall have attained the age of fifty years, payment of monthly installments of the amount of retirement award to such member shall commence on the date he or she attains the age of fifty years. Beginning on the fifteenth day of July, one thousand nine hundred ninety-four, in no event may the provisions of section thirteen, article sixteen, chapter five of this code be applied in determining eligibility to retire with either immediate or deferred commencement of benefit.

(d) Any individual who is a leased employee shall not be eligible to participate in the fund. For purposes of this fund, a “leased employee” means any individual who performs services as an independent contractor or pursuant to an agreement with an employee leasing organization or other similar organization. If a question arises regarding the status of an individual as a leased employee, the board has final power to decide the question.

§15-2-28. Credit toward retirement for member’s prior military service; credit toward retirement when member has joined armed forces in time of armed conflict; qualified military service.

(a) For purposes of this section, the term “active military duty” means full-time active duty with the armed forces of the
United States, namely, the United States air force, army, coast guard, marines or navy; and service with the national guard or reserve military forces of any of such armed forces when the member has been called to active full-time duty and has received no compensation during the period of such duty from any person other than the armed forces.

(b) Any member of the department who has previously served on active military duty shall be entitled to and receive credit on the minimum period of service required by law for retirement pay from the service of the department of public safety under the provisions of this article for a period equal to the active military duty not to exceed five years, subject to the following:

(1) That he or she has been honorably discharged from the armed forces;

(2) That he or she substantiates by appropriate documentation or evidence his or her period of active military duty;

(3) That he or she is receiving no benefits from any other retirement system for his or her active military duty; and

(4) That, except with respect to disability retirement pay awarded under section thirty of this article, he or she has actually served with the department for twenty years exclusive of his or her active military duty.

(c) The amount of retirement pay to which any such member is entitled shall be calculated and determined as if he or she had been receiving for the period of his or her active military duty a monthly salary from the department equal to the average monthly salary which he or she actually received from the department for his or her total service with the department exclusive of the active military duty. The superintendent is authorized to transfer and pay into the death, disability and retirement fund from moneys appropriated for the department...
a sum equal to eighteen percent of the aggregate of the salaries
on which the retirement pay of all such members has been
calculated and determined for their periods of active military
duty. In addition, any person who while a member of the
department was commissioned, enlisted or inducted into the
armed forces of the United States or, being a member of the
reserve officers' corps, was called to active duty in said armed
forces between the first day of September, one thousand nine
hundred forty, and the close of hostilities in World War II, or
between the twenty-seventh day of June, one thousand nine
hundred fifty, and the close of the armed conflict in Korea on
the twenty-seventh day of July, one thousand nine hundred
fifty-three, between the first day of August, one thousand nine
hundred sixty-four and the close of the armed conflict in
Vietnam, or during any other period of armed conflict by the
United States whether sanctioned by a declaration of war by the
congress or by executive or other order of the president, shall
be entitled to and receive credit on the minimum period of
service required by law for retirement pay from the service of
the department of public safety for a period equal to the full
time he or she has or shall, pursuant to such commission,
enlistment, induction or call, have served with said armed
forces subject to the following:

(1) That he or she has been honorably discharged from the
armed forces;

(2) That within ninety days after honorable discharge from
the armed forces he or she has presented himself to the superin-
tendent and offered to resume service as an active member of
the department; and

(3) That he or she has made no voluntary act, whether by
reenlistment, waiver of discharge, acceptance of commission or
otherwise, to extend or participate in extension of the period of
service with the armed forces beyond the period of service for
which he or she was originally commissioned, enlisted, inducted or called.

(d) That amount of retirement pay to which any such member shall be entitled shall be calculated and determined as if the member has continued in the active service of the department at the rank or grade to him appertaining at the time of such commission, induction, enlistment or call, during a period coextensive with the time the member served with the armed forces pursuant to the commission, induction, enlistment or call. The superintendent of the department is authorized to transfer and pay each month into the death, disability and retirement fund from moneys appropriated for the department a sum equal to eighteen percent of the aggregate of salary which all such members would have been entitled to receive had they continued in the active service of the department during a period coextensive with the time such members served with the armed forces pursuant to the commission, induction, enlistment or call: Provided, That the total amount of military service credit allowable under this section shall not exceed five years.

(e) Notwithstanding any of the preceding provisions of this section, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code. For purposes of this section, “qualified military service” has the same meaning as in Section 414(u) of the Internal Revenue Code. The retirement board is authorized to determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the retirement board in section one, article ten-d, chapter five of this code, may promulgate rules relating to contributions, benefits and service credit to comply with Section 414(u) of the Internal Revenue Code.

(a) Any member of the division who has been or shall become physically or mentally permanently disabled by injury, illness or disease resulting from any occupational risk or hazard inherent in or peculiar to the services required of members of the division and incurred pursuant to or while such member was or shall be engaged in the performance of his or her duties as a member of the division shall, if, in the opinion of the retirement board, he or she is by reason of such cause unable to perform adequately the duties required of him or her as a member of the division, but is able to engage in any other gainful employment, be retired from active service by the retirement board. The member thereafter shall be entitled to receive annually and there shall be paid to such member from the death, disability and retirement fund in equal monthly installments during the lifetime of such member; or until the member attains the age of fifty; or until such disability shall sooner terminate, one or the other of two amounts, whichever is greater:

(1) An amount equal to two thirds of the salary received in the preceding twelve-month employment period: Provided, that if the member had not been employed with the division for twelve months prior to the disability, the amount of monthly salary shall be annualized for the purpose of determining the benefit; or

(2) The sum of six thousand dollars.

(b) Upon attaining age fifty, the member shall receive the benefit provided for in subsection (c), section twenty-seven of this article as it would apply to his or her aggregate career earnings from the division through the day immediately preceding his or her disability. The recalculation of benefit upon a member attaining age fifty shall be deemed to be a retirement under the provisions of section twenty-seven of this article, for purposes of determining the amount of annual annuity adjustment and for all other purposes of this article. If any member shall become permanently physically or mentally
disabled by injury, illness or disease resulting from any occupational risk or hazard inherent in or peculiar to the services required of members of the division and incurred pursuant to or while such member was or shall be engaged in the performance of his or her duties as a member of the division, to the extent that such member is or shall be incapacitated ever to engage in any gainful employment, such member shall be entitled to receive annually and there shall be paid to such member from the death, disability and retirement fund in equal monthly installments during the lifetime of such member or until such disability shall sooner terminate, an amount equal to the amount of the salary received by the member in the preceding twelve-month employment period: Provided, That in no event may such amount be less than fifteen thousand dollars per annum, unless required by section forty of this article: Provided, however, That if the member had not been employed with the division for twelve months prior to the disability, the amount of monthly salary shall be annualized for the purpose of determining the benefit.

(c) The superintendent is authorized to expend moneys from funds appropriated for the division in payment of medical, surgical, laboratory, X-ray, hospital, ambulance and dental expenses and fees, and reasonable costs and expenses incurred in the purchase of artificial limbs and other approved appliances which may be reasonably necessary for any member of the division who has or shall become temporarily, permanently or totally disabled by injury, illness or disease resulting from any occupational risk or hazard inherent in or peculiar to the service required of members of the division and incurred pursuant to or while such member was or shall be engaged in the performance of duties as a member of the division. Whenever the superintendent shall determine that any disabled member is ineligible to receive any of the aforesaid benefits at public expense, the superintendent shall, at the request of such disabled member,
refer such matter to the consolidated public retirement board for hearing and final decision.

(d) For the purposes of this section, the term “salary” does not include any compensation paid for overtime service.

§15-2-35. Same - When member dies after retirement or after serving twenty years.

When any member of said department has heretofore completed or hereafter shall complete twenty years of service or longer as a member of said department and has died or shall die from any cause or causes other than those specified in this article before having been retired by the retirement board, and when a member in retirement status has died or shall die after having been retired by the retirement board under the provisions of this article, there shall be paid annually in equal monthly installments from said fund to the surviving spouse of said member, commencing on the date of the death of said member and continuing during the lifetime or until remarriage of said surviving spouse an amount equal to three-fourths the retirement benefits said deceased member was receiving while in status of retirement, or would have been entitled to receive to the same effect as if such member had been retired under the provisions of this article immediately prior to the time of his or her death and in no event to be less than five thousand dollars unless otherwise required under section forty of this article and in addition thereto said surviving spouse shall be entitled to receive and there shall be paid to such surviving spouse from said fund the sum of one hundred dollars monthly for each dependent child or children. If such surviving spouse die, or remarry, or if there be no surviving spouse there shall be paid monthly from said fund to each dependent child or children of said deceased member a sum equal to twenty-five percent of the surviving spouse’s entitlement. If there be no surviving spouse or no surviving spouse eligible to receive benefits and no dependent child or children there shall be paid annually in equal
monthly installments from said fund to the dependent parents of said deceased member during their joint lifetimes a sum equal to the amount which a surviving spouse without children would have been entitled to receive: Provided, That when there shall be but one dependent parent surviving, such parent shall be entitled to receive during his or her lifetime one half the amount which both parents, if living, would have been entitled to receive.

§15-2-44. Federal law maximum benefit limitations.

Notwithstanding any other provision of this article or state law, the board shall administer the fund in compliance with the limitations of Section 415 of the Internal Revenue Code and regulations under that section to the extent applicable to governmental plans so that no annuity or other benefit provided under this fund shall exceed those limitations. The extent to which any annuity or other benefit payable under this fund shall be reduced as compared with the extent to which an annuity, contributions or other benefits under any other defined benefit plans or defined contribution plans required to be taken into consideration under Section 415 of the Internal Revenue Code shall be reduced shall be determined by the board in a manner that shall maximize the aggregate benefits payable to the member. If the reduction is under this fund, the board shall advise affected members of any additional limitation on the annuities required by this section.

§15-2-45. Federal law minimum required distributions.

The requirements of this section apply to any distribution of a member’s or beneficiary’s interest and take precedence over any inconsistent provisions of this code. This section applies to plan years beginning after the thirty-first day of December, one thousand nine hundred ninety-eight. Notwithstanding anything in the retirement system to the contrary, the payment of benefits under this article shall be determined and
made in accordance with Section 401(a)(9) of the Internal Revenue Code and the regulations thereunder. For this purpose, the following provisions apply:

(a) The payment of benefits under the fund to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under Section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary, or over a period not extending beyond the life expectancy of the member and his or her beneficiary. For purposes of this section, the term “required beginning date” means the first day of April of the calendar year following the later of: (i) The calendar year in which the member attains age seventy and one-half, or (ii) the calendar year in which the member retires or otherwise ceases providing covered service under this fund.

(b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the retirement system has been distributed, then the remaining portion of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death.

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the fund shall be distributed by the thirty-first day of December of the calendar year containing the fifth anniversary of the member’s death, except as follows:

(1) If a member's interest is payable to a beneficiary, distributions may be made over the life of that beneficiary or over a period certain not greater than the life expectancy of the beneficiary commencing on or before the thirty-first day of
December of the calendar year immediately following the calendar year in which the participant died; or

(2) If the member’s beneficiary is the surviving spouse, the date distributions are required to begin shall be no later than the later of:

(A) The thirty-first day of December of the calendar year in which the member would have attained age seventy and one-half; or

(B) The earlier of: (i) The thirty-first day of December of the calendar year following the calendar year in which the member died, or (ii) the thirty-first day of December of the calendar year following the calendar year in which the spouse died.

§15-2-46. Direct rollovers.

(a) This section applies to distributions made on or after the first day of January, one thousand nine hundred ninety-three. Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee’s election under this fund, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution that is equal to at least five hundred dollars paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this section, the following definitions apply:

(1) “Eligible rollover distribution” means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any of the following: (i) Any distribution that is one of a series of substantially equal periodic payments not less frequently than annually made for the life or life expectancy of the distributee or the joint lives or the joint life expectancies of the distributee and the distributee’s designated beneficiary, or
for a specified period of ten years or more; (ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; (iii) the portion of any distribution that is not includable in gross income determined without regard to the exclusion for net unrealized appreciation with respect to employer securities; (iv) any hardship distribution described in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code; and (v) any other distribution or distributions that is reasonably expected to total less than two hundred dollars during a year.

(2) “Eligible retirement plan” means an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code, or a qualified plan described in Section 401(a) of the Internal Revenue Code, that accepts the distributee’s eligible rollover distribution: Provided, That in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

(3) “Distributee” means a member. In addition, the member’s surviving spouse and the member’s spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code with respect to governmental plans, are distributees with regard to the interest of the spouse or former spouse.

(4) “Direct rollover” means a payment by the system to the eligible retirement plan.

(b) Nothing in this section may be construed as permitting rollovers into this fund or any other retirement system administered by the board.
§15-2-47. Federal qualification requirements.

This retirement system is intended to meet the requirements of Section 401(a) of the Internal Revenue Code as applicable to governmental plans. Notwithstanding any other provision of state law, the board shall administer the retirement system to fulfill this intent for the exclusive benefit of the members and their beneficiaries. Any provision of this article referencing or relating to these federal qualification requirements shall be effective as of the date required by federal law. The board may promulgate rules and amend or repeal conflicting rules in accordance with the authority granted to the board pursuant to section one, article ten-d of chapter five to assure compliance with this section.


The board shall specify and adopt all actuarial assumptions for the fund at its first meeting of every calendar year or as soon thereafter as may be practicable, which assumptions shall become part of the terms of the fund.

§15-2-49. Benefits not forfeited if system terminates.

If the fund is terminated or contributions are completely discontinued, the rights of all members to benefits accrued or contributions made to the date of such termination or discontinuance, to the extent then funded, are not forfeited.

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.

§15-2A-3. Creation and administration of West Virginia state police retirement system; leased employees; federal qualification requirements.
§15-2A-5. Members' contributions; employer contributions; forfeitures.
§15-2A-6b. Federal law minimum required distributions.
§15-2A-6c. Direct rollovers.
§15-2A-15. Exemption from taxation, garnishment and other process; exception for certain qualified domestic relations orders.

§15-2A-19. Credit toward retirement for member's prior military service; credit toward retirement when member has joined armed forces in time of armed conflict; qualified military service.


As used in this article, unless the context clearly requires a different meaning:

1. "Active military duty" means full-time active duty with the armed forces of the United States, namely, the United States air force, army, coast guard, marines or navy; and service with the national guard or reserve military forces of any of such armed forces when the member has been called to active full-time duty and has received no compensation during the period of such duty from any person other than the armed forces.

2. "Base salary" means compensation paid to a member without regard to any overtime pay.

3. "Board" means the consolidated public retirement board created pursuant to article ten-d, chapter five of this code.

4. "Division" means the division of public safety.

5. "Final average salary" means the average of the highest annual compensation received for employment with the division, including compensation paid for overtime service, received by the member during any five years within the member's last ten years of service.

6. "Fund" means the West Virginia state police retirement fund created pursuant to section four of this article.
(7) "Member" or "employee" means a person regularly employed in the service of the division of public safety after the effective date of this article.

(8) "Salary" means the compensation of a member, excluding any overtime payments.

(9) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.

(10) "Plan year" means the twelve month period commencing on the first day of July of any designated year and ending the following thirtieth day of June.

(11) "Required beginning date" means the first day of April of the calendar year following the later of: (a) The calendar year in which the member attains age seventy and one-half; or (b) the calendar year in which he or she retires or otherwise separates from service with the department.

(12) "Retirement system" or "system" means the West Virginia state police retirement system created and established by this article.

§15-2A-3. Creation and administration of West Virginia state police retirement system; leased employees; federal qualification requirements.

(a) There is hereby created the West Virginia state police retirement system. Any West Virginia state trooper employed by the West Virginia state police on or after the effective date of this article shall be a member of this retirement system and may not qualify for membership in any other retirement system administered by the consolidated public retirement board, so long as he or she remains employed by the state police.

(b) Any individual who is a leased employee shall not be eligible to participate in the system. For purposes of this
system, a “leased employee” means any individual who performs services as an independent contractor or pursuant to an agreement with an employee leasing organization or other similar organization. If a question arises regarding the status of an individual as a leased employee, the board has final power to decide the question.

(c) The consolidated public retirement board created pursuant to article ten-d, chapter five of this code shall administer the West Virginia state police retirement system. The board may sue and be sued, contract and be contracted with and conduct all the business of the system in the name of the West Virginia state police retirement system.

(d) This retirement system is intended to meet the federal qualification requirements of Section 401(a) and related sections of the Internal Revenue Code as applicable to governmental plans. Notwithstanding any other provision of state law, the board shall administer the retirement system to fulfill this intent for the exclusive benefit of the members and their beneficiaries. Any provision of this article referencing or relating to these federal qualification requirements shall be effective as of the date required by federal law. The board may promulgate rules and amend or repeal conflicting rules in accordance with the authority granted to the board pursuant to section one, article ten-d, chapter five of this code, to assure compliance with this section.


The board shall specify and adopt all actuarial assumptions for the fund at its first meeting in each calendar year or as soon thereafter as may be practicable, which assumptions shall become part of the terms of the system.

§15-2A-5. Members’ contributions; employer contributions; forfeitures.
(a) There shall be deducted from the monthly payroll of each member and paid into the fund created pursuant to section four of this article twelve percent of the amount of his or her salary. An additional twelve percent of the monthly salary of each member of the department shall be paid by the state of West Virginia monthly into such fund out of the annual appropriation for the division.

(b) Notwithstanding any other provisions of this article, forfeitures under the system shall not be applied to increase the benefits any member would otherwise receive under the system.


Notwithstanding any other provision of this article or state law, the board shall administer the retirement system in compliance with the limitations of Section 415 of the Internal Revenue Code and treasury regulations under that section to the extent applicable to governmental plans so that no annuity or other benefit provided under this system shall exceed those limitations. The extent to which any annuity or other benefit payable under this retirement system shall be reduced as compared with the extent to which an annuity, contributions or other benefits under any other defined benefit plans or defined contribution plans required to be taken into consideration under Section 415 of the Internal Revenue Code shall be reduced shall be determined by the board in a manner that shall maximize the aggregate benefits payable to the member. If the reduction is under this retirement system, the board shall advise affected members of any additional limitation on the annuities required by this section.

§15-2A-6b. Federal law minimum required distributions.

The requirements of this section apply to any distribution of a member’s interest and take precedence over any inconsistent provisions of this retirement system. This section applies
to plan years beginning after the thirty-first day of December, one thousand nine hundred eighty-six. Notwithstanding anything in the retirement system to the contrary, the payment of benefits under this article shall be determined and made in accordance with Section 401(a)(9) of the Internal Revenue Code and the regulations thereunder. For this purpose, the following provisions apply:

(a) The payment of benefits under the retirement system to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under Section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary.

(b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the retirement system has been distributed, then the remaining portion of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death.

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the retirement system shall be distributed by the thirty-first day of December of the calendar year containing the fifth anniversary of the member’s death, except as follows:

(1) If a member’s interest is payable to a beneficiary, distributions may be made over the life of that beneficiary or over a period certain not greater than the life expectancy of the beneficiary commencing on or before the thirty-first of December of the calendar year immediately following the calendar year in which the member died; or
(2) If the member’s beneficiary is the surviving spouse, the date distributions are required to begin shall be no later than the later of:

(A) The thirty-first day of December of the calendar year in which the member would have attained age seventy and one-half; or

(B) The earlier of: (i) The thirty-first day of December of the calendar year following the calendar year in which the member died; or (ii) the thirty-first day of December of the calendar year following the calendar year in which the spouse died.

§15-2A-6c. Direct rollovers.

(a) This section applies to distributions made on or after the first day of January, one thousand nine hundred ninety-three. Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee’s election under this system, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution that is equal to at least five hundred dollars paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this section, the following definitions shall apply:

(1) “Eligible rollover distribution” means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any of the following: (i) Any distribution that is one of a series of substantially equal periodic payments not less frequently than annually made for the life or life expectancy of the distributee or the joint lives or the joint life expectancies of the distributee and the distributee’s designated beneficiary, or for a specified period of ten years or more; (ii) any distribution to the extent such distribution is required under Section
(2) "Eligible retirement plan" means an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code or a qualified plan described in Section 401(a) of the Internal Revenue Code that accepts the distributee's eligible rollover distribution: Provided, That in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

(3) "Distributee" means an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code with respect to governmental plans, are distributees with regard to the interest of the spouse or former spouse.

(4) "Direct rollover" means a payment by the system to the eligible retirement plan.

(b) Nothing in this section may be construed as permitting rollovers into this system or any other retirement system administered by the board.
§15-2A-15. Exemption from taxation, garnishment and other process; exception for certain qualified domestic relations orders.

The moneys in the fund and the right of a member to a retirement allowance, to the return of contributions, or to any benefit under the provisions of this article, are hereby exempt from any state or municipal tax; shall not be subject to execution, garnishment, attachment or any other process whatsoever except that the benefits or contributions under this system shall be subject to “qualified domestic relations orders” as that term is defined in Section 414(p) of the Internal Revenue Code with respect to governmental plans; and shall be unassignable except as is provided in this article.

§15-2A-19. Credit toward retirement for member’s prior military service; credit toward retirement when member has joined armed forces in time of armed conflict; qualified military service.

(a) Any member who has previously served on active military duty is entitled to receive additional credited service for the purpose of determining the amount of retirement award under the provisions of this article for a period equal to the active military duty not to exceed five years, subject to the following:

(1) That he or she has been honorably discharged from the armed forces;

(2) That he or she substantiates by appropriate documentation or evidence his or her period of active military duty;

(3) That he or she is receiving no benefits from any other retirement system for his or her active military duty; and

(4) That, except with respect to disability retirement pay awarded under this article, he or she has actually served with
the division for twenty years exclusive of his or her active
military duty.

(b) In addition, any person who while a member of the
division was commissioned, enlisted or inducted into the armed
forces of the United States or, being a member of the reserve
officers' corps, was called to active duty in the armed forces
between the first day of September, one thousand nine hundred
forty, and the close of hostilities in World War II, or between
the twenty-seventh day of June, one thousand nine hundred
fifty, and the close of the armed conflict in Korea on the
twenty-seventh day of July, one thousand nine hundred
fifty-three, between the first day of August, one thousand nine
hundred sixty-four, and the close of the armed conflict in
Vietnam, or during any other period of armed conflict by the
United States whether sanctioned by a declaration of war by
Congress or by executive or other order of the president, is
entitled to and shall receive credit on the minimum period of
service required by law for retirement pay from the service of
the division of public safety, or its predecessor agency, for a
period equal to the full time that he or she has or, pursuant to
that commission, enlistment, induction or call, shall have served
with the armed forces subject to the following:

(1) That he or she has been honorably discharged from the
armed forces;

(2) That within ninety days after honorable discharge from
the armed forces, he or she presented himself or herself to the
superintendent and offered to resume service as an active
member of the division; and

(3) That he or she has made no voluntary act, whether by
reenlistment, waiver of discharge, acceptance of commission or
otherwise, to extend or participate in extension of the period of
service with the armed forces beyond the period of service for
which he or she was originally commissioned, enlisted, inducted or called.

(c) The total amount of military service credit allowable under this section may not exceed five years for any member of the division.

(d) Notwithstanding the preceding provisions of this section, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code. For purposes of this section, “qualified military service” has the same meaning as in Section 414(u) of the Internal Revenue Code. The retirement board is authorized to determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the retirement board in section one, article ten-d, chapter five of this code, may promulgate rules relating to contributions, benefits and service credit to comply with Section 414(u) of the Internal Revenue Code.


If the retirement system is terminated or contributions are completely discontinued, the rights of all members to benefits accrued or contributions made to the date of such termination or discontinuance, to the extent then funded, are not forfeited.

CHAPTER 18. EDUCATION.

Article
7A. State Teachers Retirement System.
7B. Teachers’ Defined Contribution Retirement System.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-3a. Federal qualification requirements.
§18-7A-11. Records; actuarial data; tables; specification of actuarial assumptions.
§18-7A-13. Membership in retirement system; cessation of membership; reinstatement of withdrawn service.
§18-7A-14b. Members’ option to make contributions for periods of temporary total disability.
§18-7A-17. Statement and computation of teachers' service; qualified military service.


§18-7A-28b. Federal law minimum required distributions.

§18-7A-28c. Direct rollovers.

§18-7A-30. Exemption from taxation, garnishment and other process; exception for qualified domestic relations order.

§18-7A-34. Loans to members.

§18-7A-37. Benefits not forfeited if system terminates.

§18-7A-3a. Federal qualification requirements.

1 The retirement system is intended to meet the federal qualification requirements of Section 401(a) and related sections of the Internal Revenue Code as applicable to governmental plans. Notwithstanding any other provision of state law, the board shall administer the retirement system to fulfill this intent for the exclusive benefit of the members and their beneficiaries. Any provision of this article referencing or relating to these federal qualification requirements shall be effective as of the date required by federal law. The board may promulgate rules and amend or repeal conflicting rules in accordance with the authority granted to the board pursuant to section one, article ten-d of chapter five to assure compliance with this section.

§18-7A-11. Records; actuarial data; tables; specification of actuarial assumptions.

1 The retirement board shall maintain an individual account with each member, showing the amount of the member's contributions and the interest accumulations thereon. It shall collect and keep in convenient form data as may be necessary for the preparation of the required mortality and service tables, and for the compilation of such other information as may be needed for the actuarial valuation of the funds created by this article. The retirement board shall specify and adopt all actuarial assumptions for the system at its first meeting of every
calendar year or as soon thereafter as may be practicable, which assumptions shall become part of the terms of the system.

§18-7A-13. Membership in retirement system; cessation of membership; reinstatement of withdrawn service.

The membership of the retirement system shall consist of the following:

(a) New entrants, whose membership in the system shall be compulsory upon employment as teachers and nonteachers.

(b) The membership of the retirement system shall not include any person who is an active member of or who has been retired by the West Virginia public employees retirement system, the judge’s retirement system, or the retirement system of the department of public safety or the supplemental retirement system as provided in section four-a, article twenty-three of this chapter. The membership of any person in the retirement system shall cease:

(1) Upon the withdrawal of accumulated contributions after the cessation of service; or (2) upon retirement; or (3) at death; or (4) if service amounts to fewer than five years in any period of ten consecutive years.

(c) Any former member of the retirement system who has withdrawn accumulated contributions but subsequently reenters the retirement system shall be permitted to repay to the retirement fund the amount withdrawn, plus interest at a rate of six percent, compounded annually from the date of withdrawal to the date of repayment: Provided, That no such repayment may be made until the former member has completed two years of contributory service after reentry; and such member shall be accorded all the rights to prior service and experience as were held at the time of withdrawal of such accumulated contributions: Provided, however, That no withdrawn service may be reinstated that has been transferred to another retirement system.
from which the member is currently or will in the future draw benefits based on the same service. The interest paid shall be deposited in the reserve fund.

(d) No member shall be eligible for prior service credit unless he or she is eligible for prior service pension, as prescribed by section twenty-two of this article; however, a new entrant who becomes a present teacher as provided in this paragraph shall be deemed eligible for prior service pension upon retirement.

(e) Any individual who is a leased employee shall not be eligible to participate in the system. For purposes of this system, a "leased employee" means any individual who performs services as an independent contractor or pursuant to an agreement with an employee leasing organization or other similar organization. If a question arises regarding the status of an individual as a leased employee, the board has final power to decide the question.

§18-7A-14b. Members' option to make contributions for periods of temporary total disability.

Any member who was absent from work while receiving temporary total disability benefits pursuant to the provisions of chapter twenty-three of this code as a result of a compensable injury received in the course of and as a result of his or her employment with the covered employer during the time period beginning the first day of January, one thousand nine hundred eighty-eight and the thirty-first day of December, one thousand nine hundred ninety-eight, may purchase credited service for that time period or those time periods the member was absent from work as a result of a compensable injury and receiving temporary total disability benefits: Provided, That the member returned to work with his or her covered employer within one year following the cessation of temporary total disability benefits. The member desiring to purchase such credited service may do so only by lump sum payment from personal funds: Provided, however, That the purchase of service credit pursuant

*Clerk's Note: This section was also amended by H. B. 4575 (Chapter 212), which passed prior to this act.
to the provisions of this section shall be completed between the

time period beginning the first day of July, two thousand and

ending the thirtieth day of June, two thousand one: Provided

further, That in order to purchase such service credit, the

member shall pay to the board his or her regular contribution

and an equal amount that represents the employer’s contribu-

tion, based on the salary the member was receiving immediately

prior to having sustained such compensable injury: And

provided further, That the member purchasing service credit

under the provisions of this section may not be charged interest.

The maximum number of years of service credit that may be

purchased under this section shall not exceed four.

§18-7A-17. Statement and computation of teachers’ service;

qualified military service.

(a) Under rules adopted by the retirement board, each

teacher shall file a detailed statement of his or her length of

service as a teacher for which he or she claims credit. The

retirement board shall determine what part of a year is the

equivalent of a year of service. In computing the service,

however, it shall credit no period of more than a month’s

duration during which a member was absent without pay, nor

shall it credit for more than one year of service performed in

any calendar year.

(b) For the purpose of this article, the retirement board shall

grant prior service credit to new entrants and other members of

the retirement system for service in any of the armed forces of

the United States in any period of national emergency within

which a federal Selective Service Act was in effect. For

purposes of this section, “armed forces” includes women’s

army corps, women’s appointed volunteers for emergency

service, army nurse corps, spars, women’s reserve and other

similar units officially parts of the military service of the United

States. The military service is considered equivalent to public

school teaching, and the salary equivalent for each year of that
service is the actual salary of the member as a teacher for his or her first year of teaching after discharge from military service. Prior service credit for military service shall not exceed ten years for any one member, nor shall it exceed twenty-five percent of total service at the time of retirement. Notwithstanding the preceding provisions of this subsection, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code. For purposes of this section, "qualified military service" has the same meaning as in Section 414(u) of the Internal Revenue Code. The retirement board is authorized to determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the retirement board in section one, article ten-d, chapter five of this code, may promulgate rules relating to contributions, benefits and service credit to comply with Section 414(u) of the Internal Revenue Code.

(c) For service as a teacher in the employment of the federal government, or a state or territory of the United States, or a governmental subdivision of that state or territory, the retirement board shall grant credit to the member: Provided, That the member shall pay to the system double the amount he or she contributed during the first full year of current employment, times the number of years for which credit is granted, plus interest at a rate to be determined by the retirement board. The interest shall be deposited in the reserve fund and service credit granted at the time of retirement shall not exceed the lesser of ten years or fifty percent of the member's total service as a teacher in West Virginia. Any transfer of out-of-state service, as provided in this article, shall not be used to establish eligibility for a retirement allowance and the retirement board shall grant credit for the transferred service as additional service only: Provided, however, That a transfer of out-of-state service is prohibited if the service is used to obtain a retirement benefit from another retirement system: Provided further, That salaries
paid to members for service prior to entrance into the retirement system shall not be used to compute the average final salary of the member under the retirement system.

(d) Service credit for members or retired members shall not be denied on the basis of minimum income rules promulgated by the teachers retirement board: Provided, That the member or retired member shall pay to the system the amount he or she would have contributed during the year or years of public school service for which credit was denied as a result of the minimum income rules of the teachers retirement board.

(e) No members shall be considered absent from service while serving as a member or employee of the Legislature of the state of West Virginia during any duly constituted session of that body or while serving as an elected member of a county commission during any duly constituted session of that body.

(f) No member shall be considered absent from service as a teacher while serving as an officer with a statewide professional teaching association, or who has served in that capacity, and no retired teacher, who served in that capacity while a member, shall be considered to have been absent from service as a teacher by reason of that service: Provided, That the period of service credit granted for that service shall not exceed ten years: Provided, however, That a member or retired teacher who is serving or has served as an officer of a statewide professional teaching association shall make deposits to the teachers retirement board, for the time of any absence, in an amount double the amount which he or she would have contributed in his or her regular assignment for a like period of time.

The teachers retirement board shall grant service credit to any former or present member of the West Virginia public employees retirement system who has been a contributing member for more than three years, for service previously credited by the public employees retirement system and: (1)
Shall require the transfer of the member's contributions to the teachers retirement system; or (2) shall require a repayment of the amount withdrawn any time prior to the member's retirement: Provided, That there shall be added by the member to the amounts transferred or repaid under this subsection an amount which shall be sufficient to equal the contributions he or she would have made had the member been under the teachers retirement system during the period of his or her membership in the public employees retirement system plus interest at a rate of six percent compounded annually from the date of withdrawal to the date of payment. The interest paid shall be deposited in the reserve fund.

(g) For service as a teacher in an elementary or secondary parochial school, located within this state and fully accredited by the West Virginia department of education, the retirement board shall grant credit to the member: Provided, That the member shall pay to the system double the amount contributed during the first full year of current employment, times the number of years for which credit is granted, plus interest at a rate to be determined by the retirement board. The interest shall be deposited in the reserve fund and service granted at the time of retirement shall not exceed the lesser of ten years or fifty percent of the member's total service as a teacher in the West Virginia public school system. Any transfer of parochial school service, as provided in this section, may not be used to establish eligibility for a retirement allowance and the board shall grant credit for the transfer as additional service only: Provided, however, That a transfer of parochial school service is prohibited if the service is used to obtain a retirement benefit from another retirement system.

(h) If a member is not eligible for prior service credit or pension as provided in this article, then his or her prior service shall not be considered a part of his or her total service.
(i) A member who withdrew from membership may regain his or her former membership rights as specified in section thirteen of this article only in case he or she has served two years since his or her last withdrawal.

(j) Subject to the provisions of subsection (a) through (i), inclusive, of this section, the board shall verify as soon as practicable the statements of service submitted. The retirement board shall issue prior service certificates to all persons eligible for the certificates under the provisions of this article. The certificates shall state the length of the prior service credit, but in no case shall the prior service credit exceed forty years.

Notwithstanding any provision of this article to the contrary, when a member is or has been elected to serve as a member of the Legislature, and the proper discharge of his or her duties of public office require that member to be absent from his or her teaching or administrative duties, the time served in discharge of his or her duties of the legislative office are credited as time served for purposes of computing service credit: Provided, That the board may not require any additional contributions from that member in order for the board to credit him or her with the contributing service credit earned while discharging official legislative duties: Provided, however, That nothing herein may be construed to relieve the employer from making the employer contribution at the member’s regular salary rate or rate of pay from that employer on the contributing service credit earned while the member is discharging his or her official legislative duties. These employer payments shall commence as of the first day of June, two thousand: Provided, further, That any member to which the provisions of this subsection apply may elect to pay to the board an amount equal to what his or her contribution would have been for those periods of time he or she was serving in the Legislature. The periods of time upon which the member paid his or her contribution shall then be included for purposes of determining his or
her final average salary as well as for determining years of service: And provided further, That a member utilizing the provisions of this subsection is not required to pay interest on any contributions he or she may decide to make.


Notwithstanding any other provision of this article or state law, the board shall administer the retirement system in compliance with the limitations of Section 415 of the Internal Revenue Code and regulations under that section to the extent applicable to governmental plans so that no annuity or other benefit provided under this system shall exceed those limitations. The extent to which any annuity or other benefit payable under this retirement system shall be reduced as compared with the extent to which an annuity, contributions or other benefits under any other defined benefit plans or defined contribution plans required to be taken into consideration under Section 415 of the Internal Revenue Code shall be reduced shall be determined by the board in a manner that shall maximize the aggregate benefits payable to the member. If the reduction is under this retirement system, the board shall advise affected members of any additional limitation on the annuities required by this section.

§18-7A-28b. Federal law minimum required distributions.

The requirements of this section apply to any distribution of a member’s or beneficiary’s interest and take precedence over any inconsistent provisions of this retirement system. This section applies to plan years beginning after the thirty-first day of December, one thousand eight hundred eighty-six. Notwithstanding anything in the retirement system to the contrary, the payment of benefits under this article shall be determined and made in accordance with Section 401(a)(9) of the Internal Revenue Code and the regulations thereunder. For this purpose, the following provisions apply:
The payment of benefits under the retirement system to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under Section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary.

If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the retirement system has been distributed, then the remaining portion of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death.

If a member dies before distribution to him or her has commenced, then his or her entire interest in the retirement system shall be distributed by the thirty-first day of December of the calendar year containing the fifth anniversary of the member’s death, except as follows:

(1) If a member’s interest is payable to a beneficiary, distributions may be made over the life or over a period certain not greater than the life expectancy of the beneficiary commencing on or before the thirty-first of December of the calendar year immediately following the calendar year in which the member died; or

(2) If the member’s beneficiary is the surviving spouse, the date distributions are required to begin shall be no later than the later of:

(A) The thirty-first day of December of the calendar year in which the member would have attained age seventy and one-half; or
(B) The earlier of: (i) The thirty-first day of December of the calendar year following the calendar year in which the member died; or (ii) the thirty-first day of December of the calendar year following the calendar year in which the spouse died.

§18-7A-28c. Direct rollovers.

(a) This section applies to distributions made on or after the first day of January, one thousand nine hundred ninety-three. Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee’s election under this system, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution that is equal to at least five hundred dollars paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this section, the following definitions apply:

(1) “Eligible rollover distribution” means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any of the following: (i) Any distribution that is one of a series of substantially equal periodic payments not less frequently than annually made for the life or life expectancy of the distributee or the joint lives or the joint life expectancies of the distributee and the distributee’s designated beneficiary, or for a specified period of ten years or more; (ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; (iii) the portion of any distribution that is not includable in gross income determined without regard to the exclusion for net unrealized appreciation with respect to employer securities; (iv) any hardship distribution described in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code; and (v) any other distribution reasonably or distributions expected to total less than two hundred dollars during a year.
(2) “Eligible retirement plan” means an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code, or a qualified plan described in Section 401(a) of the Internal Revenue Code, that accepts the distributee’s eligible rollover distribution: Provided, That in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

(3) “Distributee” means an employee or former employee. In addition, the employee’s or former employee’s surviving spouse and the employee’s or former employee’s spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code, as applicable to governmental plans, are distributees with regard to the interest of the spouse or former spouse.

(4) “Direct rollover” means a payment by the system to the eligible retirement plan.

(b) Nothing in this section may be construed as permitting rollovers into this system or any other retirement system administered by the board.

§18-7A-30. Exemption from taxation, garnishment and other process; exception for qualified domestic relations order.

The moneys in the various funds and the right of a member to a retirement allowance, to the return of contributions, or to any benefit under the provisions of this article, are hereby exempt from municipal tax; shall not be subject to execution, garnishment, attachment or any other process whatsoever.
except that any benefits or contributions under this system shall be subject to "qualified domestic relations orders" as that term is defined in Section 414(p) of the Internal Revenue Code with respect to governmental plans; and shall be unassignable except as is provided in this article.

§18-7A-34. Loans to members.

A member of the retirement system upon written application may borrow from his or her individual account in the teachers accumulation fund, subject to these restrictions:

(1) Loans shall be made in multiples of ten dollars, the minimal loan being one hundred dollars and the maximum being eight thousand dollars: Provided, That the maximum amount of any loan when added to the outstanding balance of all other loans shall not exceed the lesser of the following: (a) fifty thousand dollars reduced by the excess (if any) of the highest outstanding balance of loans during the one-year period ending on the day before the date on which the loan is made, over the outstanding balance of loans to the member on the date on which the loan is made; or (b) fifty percent of the member's contributions to his or her individual account in the teachers accumulations fund: Provided, however, That if the total amount of loaned money outstanding exceeds forty million dollars, the maximum shall not exceed three thousand dollars until the teachers retirement board determines that loans outstanding have been reduced to an extent that additional loan amounts are again authorized.

(2) Interest charged on the amount of the loan shall be six percent per annum, or a higher rate as set by the teachers retirement board. If repayable in installments, the interest shall not exceed the annual rate so established upon the principal amount of the loan, for the entire period of the loan, and such charge shall be added to the principal amount of the loan. The minimal interest charge shall be for six months.
(3) No member shall be eligible for more than one loan in any one year.

(4) If a refund or benefit is payable to the borrower or his or her beneficiary before he or she repays the loan with interest, the balance due with interest to date shall be deducted from such benefit or refund.

(5) From his or her monthly salary as a teacher the member shall pay the loan and interest by deductions which will pay the loan and interest in substantially level payments in not more than sixty nor less than six months. Upon notice of loan granted and payment due, the employer shall be responsible for making such salary deductions and reporting them to the retirement board. At the option of the retirement board, loan deductions may be collected as prescribed herein for the collection of members' contribution, or may be collected through issuance of warrant by employer. If the borrower decides to make loan payments while not paid for service as a teacher, the retirement board must accept such payments.

(6) The entire unpaid balance of any loan, and interest due thereon, shall, at the option of the retirement board, become due and payable without further notice or demand upon the occurrence with respect to the borrowing member of any of the following events of default: (A) Any payment of principal and accrued interest on a loan remains unpaid after the same becomes due and payable under the terms of the loan or after such grace period as may be established in the discretion of the retirement board; (B) the borrowing member attempts to make an assignment for the benefit of creditors of his or her refund or benefit under the retirement system; or (C) any other event of default set forth in rules promulgated by the retirement board in accordance with the authority granted pursuant to section one, article ten-d, chapter five of this code.
§18-7A-37. Benefits not forfeited if system terminates.

1. If the retirement system is terminated or contributions are completely discontinued, the rights of all members to benefits accrued or contributions made to the date of such termination or discontinuance, to the extent then funded, are not forfeited.

ARTICLE 7B. TEACHERS’ DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-2. Definitions.

§18-7B-4. Article to be liberally construed; purpose; federal qualification requirements.

§18-7B-7. Participation in teachers’ defined contribution retirement system; limiting participation in existing teachers’ retirement system.

§18-7B-8a. Qualified military service.

§18-7B-12. Retirement, commencement of annuity payments.

§18-7B-12a. Federal minimum required distributions.

§18-7B-13. Amount of annuity payments; federal law maximum benefit limitations.

§18-7B-13b. Direct rollovers.

§18-7B-18. Right to benefits not subject to execution, etc.; exception for qualified domestic relations orders.


§18-7B-2. Definitions.

1. As used in this article, unless the context clearly requires a different meaning:

3. “Defined contribution system” or “system” means the teachers’ defined contribution retirement system created and established by this article;
(2) "Existing retirement system" means the state teachers retirement system established in article seven-a of this chapter;

(3) "Existing employer" means any employer who employed or employs a member of the existing retirement system;

(4) "Consolidated board" or "board" means the consolidated public retirement board created and established pursuant to article ten-d, chapter five of this code;

(5) "Member" or "employee" means the following persons, if regularly employed for full-time service: (a) Any person employed for instructional service in the public schools of West Virginia; (b) principals; (c) public school librarians; (d) superintendents of schools and assistant county superintendents of schools; (e) any county school attendance director holding a West Virginia teacher's certificate; (f) the executive secretary of the retirement board; (g) members of the research, extension, administrative or library staffs of the public schools; (h) the state superintendent of schools, heads and assistant heads of the divisions under his or her supervision, or any other employee thereunder performing services of an educational nature; (i) employees of the state board of education who are performing services of an educational nature; (j) any person employed in a nonteaching capacity by the state board of education, any county board of education, the state department of education or the teachers retirement board, if such person was formerly employed as a teacher in the public schools; (k) all classroom teachers, principals and educational administrators in schools under the supervision of the department of corrections, the department of health or the department of human services; (l) any person who is regularly employed for full-time service by any county board of education, the state board of education or the teachers retirement board; and (m) the administrative staff of the public schools including deans of instruction, deans of men and deans of women, and financial and administrative secretaries;
(6) "Regularly employed for full-time service" means employment in a regular position or job throughout the employment term regardless of the number of hours worked or the method of pay;

(7) "Year of employment service" means employment for at least ten months, a month being defined as twenty employment days: Provided, That no more than one year of service may be accumulated in any twelve-month period;

(8) "Employer" means the agency of and within the state which has employed or employs a member;

(9) "Compensation" means the full compensation actually received by members for service whether or not a part of such compensation is received from other funds, federal or otherwise, than those provided by the state or its subdivisions;

(10) "Public schools" means all publicly supported schools, including normal schools, colleges and universities in this state;

(11) "Member contribution" means an amount reduced from the employee’s regular pay periods, and deposited into the member’s individual annuity account within the defined contribution retirement system;

(12) "Employer contribution" means an amount deposited into the member’s individual annuity account on a periodic basis coinciding with the employee’s regular pay period by an employer from its own funds;

(13) "Annuity account" or "annuity" means an account established for each member to record the deposit of member contributions and employer contributions and interest, dividends or other accumulations credited on behalf of the member;
§18-7B-4. Article to be liberally construed; purpose; federal qualification requirements.

The provisions of this article shall be liberally construed so as to provide a general annuity based retirement system for teachers in this state. The purpose of this article is to provide a defined contribution retirement program which is fully funded on a current basis from employer and employee contribution.

The retirement system is intended to meet the federal qualification requirements of Section 401(a) and related sections of the Internal Revenue Code as applicable to governmental plans. Notwithstanding any other provision of state law, the board shall administer the retirement system to fulfill this intent for the exclusive benefit of the members and their
beneficiaries. Any provision of this article referencing or relating to these federal qualification requirements shall be effective as of the date required by federal law. The board may promulgate rules and amend or repeal conflicting rules in accordance with the authority granted to the board pursuant to section one, article ten-d, chapter five of this code to assure compliance with the requirements of this section.

§18-7B-7. Participation in teachers’ defined contribution retirement system; limiting participation in existing teachers’ retirement system.

Beginning the first day of July, one thousand nine hundred ninety-one, the teachers’ defined contribution retirement system shall be the single retirement program for all new employees whose employment commences on or after that date. No additional new employees except as may be provided herein may be admitted to the existing retirement system. Members of the existing retirement system whose employment continues beyond the first day of July, one thousand nine hundred ninety-one, are not affected by this article and shall continue to contribute and participate in the existing system without change in provisions or benefits.

Notwithstanding the provisions of section twenty-three, article seven-a of this chapter, any employee whose employment terminates after the thirtieth day of June, one thousand nine hundred ninety-one, who is later reemployed by an employer shall be eligible for membership only in the teachers’ defined contribution system: Provided, That if such reemployment with an existing employer occurs not more than six months after the employee’s previous employment, he or she shall be entitled to readmission to the existing retirement system in which he or she was originally a member: Provided, however, That if such employee has five or more years of credited service in the existing retirement system, he or she shall be entitled to readmission into the existing retirement
system in which he or she was originally a member so long as he or she has not withdrawn his or her contributions from the existing retirement system: *Provided further,* That if such employee has withdrawn his or her contribution from the existing retirement system, then readmission shall not be permitted and the employee will be entitled only to the defined contribution system.

An employee whose employment with an employer was suspended or terminated while he or she served as an officer with a statewide professional teaching association is eligible for readmission to the existing retirement system in which he or she was a member. Any employee reemployed with an employer on or after the first day of July, one thousand nine hundred ninety-one, who had five or more years credited service in the teachers’ defined benefit retirement system may elect readmission to the teachers’ defined benefit retirement system in which he or she was originally a member. Any employee reemployed between the first day of July, one thousand nine hundred ninety-one, and the first day of July, one thousand nine hundred ninety-five, and who was required to participate in the teachers’ defined contribution system but now elects, pursuant to the provisions of this section, readmission to the teachers’ defined benefit retirement system shall pay an additional contribution to the teachers’ defined benefit retirement system equal to one and one-half percent of his or her annual gross compensation earned for each year he or she participated in the teachers’ defined contribution system and shall transfer all member and employer contributions and investment earnings therefrom from the teacher defined contribution system to the teachers’ defined benefit system and shall receive service credit for the time the member participated in the defined contribution system as if that participation had been in the teachers’ defined benefit retirement system. Any member making an election under the provisions of this section to reenter the teachers’ defined benefit retirement system who
is currently a member of the defined contribution retirement system must do so on or before the first day of January, one thousand nine hundred ninety-six. Any other member reemployed must make the election as to the retirement system that he or she will be a member of at the time he or she is reemployed.

An employee whose employment with an employer or an existing employer is suspended as a result of an approved leave of absence, approved maternity or paternity break in service, or any other approved break in service authorized by the board, is eligible for readmission to the existing retirement system in which he or she was a member.

In all cases where a question exists as to readmission to membership in the existing retirement system, the board shall decide the question.

Any individual who is a leased employee shall not be eligible to participate in the system. For purposes of this system, a “leased employee” means any individual who performs services as an independent contractor or pursuant to an agreement with an employee leasing organization or other similar organization. If a question arises regarding the status of an individual as a leased employee, the board has final power to decide the question.

§18-7B-8a. Qualified military service.

Contributions, benefits and service credit with respect to qualified military service will be provided in accordance with section 414(u) of the Internal Revenue Code. For purposes of this section, “qualified military service” has the same meaning as in Section 414(u) of the Internal Revenue Code. The retirement board is authorized to determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the retirement board in section one, article
ten-d, chapter five of this code, may promulgate rules relating to contributions, benefits and service credit to comply with Section 414(u) of the Internal Revenue Code.

§18-7B-12. Retirement, commencement of annuity payments.

At any time after an employee reaches the age of fifty-five years, and subject to the provisions of section twelve-a of this article, he or she may elect to take retirement by notifying the board or its designee in writing of such intention not less than sixty days prior to the effective date of retirement. Retirement payments shall commence within thirty days of the retirement date under such payment option or options as may be provided by the board and elected by the employee.

§18-7B-12a. Federal minimum required distributions.

The requirements of this section apply to any distribution of a member’s or beneficiary’s interest and take precedence over any inconsistent provisions of this defined contribution system. This section applies to plan years beginning after the thirty-first day of December, one thousand nine hundred eighty-six. Notwithstanding anything in this system to the contrary, the payment of benefits under this article shall be determined and made in accordance with Section 401(a)(9) of the Internal Revenue Code and the regulations thereunder. For this purpose, the following provisions apply:

(a) The payment of benefits under the defined contribution system to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under Section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary.
If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the system has been distributed, then the remaining portion of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death.

If a member dies before distribution to him or her has commenced, then his or her entire interest in the system shall be distributed by the thirty-first day of December of the calendar year containing the fifth anniversary of the member’s death, except as follows:

(1) If a member’s interest is payable to a beneficiary, distributions may be made over the life of that beneficiary or over a period certain not greater than the life expectancy of the beneficiary commencing on or before the thirty-first day of December of the calendar year immediately following the calendar year in which the participant died; or

(2) If the member’s beneficiary is the surviving spouse, the date distributions are required to begin shall be no later than the later of:

(A) The thirty-first day of December of the calendar year in which the member would have attained age seventy and one-half; or

(B) The earlier of: (i) The thirty-first day of December of the calendar year following the calendar year in which the member died; or (ii) the thirty-first day of December of the calendar year following the calendar year in which the spouse died.

For purposes of this section, any amount paid to a child of a member will be treated as if it had been paid to the surviving spouse of the member if such remaining amount becomes
payable to the surviving spouse when the child reaches the age of majority.

§18-7B-13. Amount of annuity payments; federal law maximum benefit limitations.

(a) The amount of annuity payments a retired member shall receive shall be based solely upon the balance in the member's annuity account at the date of retirement, the retirement option selected, or in the event of an annuity option being selected, the actuarial life expectancy of the member and such other factors as normally govern annuity payments.

(b) The board, or its designee, is authorized upon retirement of a member, with the approval of that member, to purchase an annuity with the balance of the member's account. Upon delivery of the annuity to the member upon his or her retirement, the member shall execute a release surrendering any claim the member may have against the retirement trust.

(c) Notwithstanding any other provision of this article or state law, the board shall administer the retirement system in compliance with the limitations of Section 415 of the Internal Revenue Code and treasury regulations under that section to the extent applicable to governmental plans so that no annuity or other benefit provided under this system shall exceed those limitations. The extent to which any annuity or other benefit payable under this retirement system shall be reduced as compared to the extent which an annuity, contributions or other benefits under any other defined benefit plans or defined contribution plans required to be taken into consideration under Section 415 of the Internal Revenue Code shall be reduced shall be determined by the board in a manner that shall maximize the aggregate benefits payable to the member. If the reduction is under this retirement system, the board shall advise affected members of any additional limitation on the annuities required by this section.
§18-7B-13b. Direct rollovers.

(a) This section applies to distributions made on or after the first day of January, one thousand nine hundred ninety-three. Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee’s election under this system, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution that is equal to at least five hundred dollars paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this section, the following definitions apply:

(1) “Eligible rollover distribution” means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any of the following: (i) Any distribution that is one of a series of substantially equal periodic payments not less frequently than annually made for the life or life expectancy of the distributee or the joint lives or the joint life expectancies of the distributee and the distributee’s designated beneficiary, or for a specified period of ten years or more; (ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; (iii) the portion of any distribution that is not includable in gross income determined without regard to the exclusion for net unrealized appreciation with respect to employer securities; (iv) any hardship distribution described in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code; and (v) any other distribution or distributions reasonably expected to total less than two hundred dollars during a year.

(2) “Eligible retirement plan” means an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code or a
qualified plan described in Section 401(a) of the Internal Revenue Code that accepts the distributee’s eligible rollover distribution: Provided, That in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

(3) "Distributee" means an employee or former employee. In addition, the employee’s or former employee’s surviving spouse and the employee’s or former employee’s spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code with respect to governmental plans, are distributees with regard to the interest of the spouse or former spouse.

(4) “Direct rollover” means a payment by the system to the eligible retirement plan.

(b) Nothing in this section may be construed as permitting rollovers into this retirement system or any other retirement system administered by the retirement board.

§18-7B-18. Right to benefits not subject to execution, etc.; exception for qualified domestic relations orders.

The right of any person to a benefit provided for in this article shall not be subjected to execution, attachment, garnishment, the operation of bankruptcy or insolvency laws, or other process whatsoever with the exception that the benefits or contributions under this system shall be subject to “qualified domestic relations orders” as that term is defined in Section 414(p) of the Internal Revenue Code with respect to governmental plans, nor shall any assignment thereof be enforceable in any court.

1 If the retirement system is terminated or contributions are completely discontinued, the rights of all members to contributions made to the date of such termination or discontinuance, to the extent then funded, are not forfeited.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.

§51-9-1a. Definitions.
§51-9-3. Custody, permissible investment and administration of retirement system trust fund; state auditor’s authority as administrator and trust fund fiduciary; refunds required, including interest; federal qualification requirements.
§51-9-4. Required percentage contributions from salaries; any termination of required contributions prior to actual retirement disallowed; leased employees; military service credit; maximum allowable and qualified military service; qualifiable prosecutorial service.
§51-9-6. Eligibility for and payment of benefits.
§51-9-6a. Eligibility benefits; service and retirement of judges over sixty-five years of age.
§51-9-12a. Federal law maximum benefit limitations.
§51-9-12b. Federal minimum required distributions.
§51-9-12c. Direct rollovers.
§51-9-14. Moneys exempt from execution, etc.; unassignable and nontransferable; exception for certain domestic relations orders.
§51-9-17. Benefits not forfeited if system terminates.

§51-9-1a. Definitions.

(a) As used in this article the term “judge” or “judge of any court of record” or “judge of any court of record of this state” shall mean, refer to and include judges of the several circuit courts and justices of the supreme court of appeals.

(b) “Beneficiary” means any person, except a member, who is entitled to an annuity or other benefit payable by the retirement system.
(c) "Board" means the consolidated public retirement board created pursuant to article ten-d, chapter five of this code.

(d) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.

(e) "Member" means a judge participating in this system.

(f) "Plan year" means the twelve month period commencing on the first day of July of any designated year and ending the following thirtieth day of June.

(g) "Required beginning date," means the first day of April of the calendar year following the later of: (a) The calendar year in which the member attains age seventy and one-half; or (b) the calendar year in which the member retires or otherwise separates from covered employment.

(h) "Retirement system" or "system" means the judges retirement system created and established by this article.

§51-9-3. Custody, permissible investment and administration of retirement system trust fund; state auditor's authority as administrator and trust fund fiduciary; refunds required, including interest; federal qualification requirements.

(a) The state treasurer shall be the custodian of the fund and of any investment securities of the retirement system and shall give a separate and additional bond for the faithful performance of his or her duties as such custodian. The governor shall fix the amount of such bond which shall be approved as to sufficiency and form by the attorney general and shall be filed in the office of the secretary of state. The premium on such bond shall be paid from the fund.

(b) In a manner and to an extent consonant with sound administrative principles, the state board of investments shall
have authority to invest such fund in interest-bearing securities of the United States of America, of the state of West Virginia and of any political subdivision thereof or such other investments as may be authorized or permitted by the provisions of article six, chapter twelve of this code.

(c) The state auditor shall be the primary fiscal officer, responsible for the records and administration of the trust fund, including budgetary matters incident to the authority vested in him or her with respect to judicial department appropriations under article VI, section fifty-one of the constitution of West Virginia. The state auditor shall also, as trust fund fiduciary, independently determine anew, in a substantive sense and as a check and balance, any information concerning eligible service years, required money contributions, computation of judge’s retirement benefit or spousal benefit or any other substantive element of qualification supplied or certified to the state auditor by any other public officer, including the supreme court administrator or the chief executive, toward proper final review before issuance of a state warrant in payment of any benefit under the judges’ retirement system.

(d) Through the thirtieth day of June, one thousand nine hundred ninety-one, the state auditor shall be the primary fiscal officer, responsible for the records and administration of the trust fund, including budgetary matter incident to the authority vested in him or her with respect to judicial department appropriations under article VI, section fifty-one of the constitution of West Virginia. The state auditor shall also, as trust fund fiduciary, independently determine anew, in a substantive sense and as a check and balance, any information concerning eligible service years, required money contributions, computation of judge’s retirement benefit or spousal benefit or any other substantial element of qualification supplied or certified to the state auditor by any other public officer, including the supreme court administrator or the chief executive, toward proper final review before issuance of a state warrant in payment of any benefit under the judges’ retirement system.
review before issuance of a state warrant in payment of any benefit under the judges’ retirement system. From the first day of July, one thousand nine hundred ninety-one and thereafter, the funds shall be administered by the consolidated public retirement board created by article ten-d, chapter five of this code.

(e) In respect of any credited service heretofore acquired under the Dostert decision and subsequent related decisions, the state auditor shall make refund to any person heretofore making payment to acquire such service credit, primary or derivative, in the amount so earlier paid, together with interest at the same rate such sum actually earned because of its investment by the auditor or treasurer, as the case may be, in the consolidated pension pool or with the interest such sum would have earned if timely invested in such pool, whichever amount of interest be greater.

(f) The retirement system is intended to meet the federal qualification requirements of Section 401(a) and related sections of the Internal Revenue Code as applicable to governmental plans. Notwithstanding any other provision of state law, the board shall administer the retirement system to fulfill this intent for the exclusive benefit of the members and their beneficiaries. Any provision of this article referencing or relating to these federal qualification requirements shall be effective as of the date required by federal law. The board may promulgate rules and amend or repeal conflicting rules in accordance with the authority granted to the board pursuant to section one, article ten-d, chapter five of this code to assure compliance with the requirements of this section.


The board at its first meeting in each calendar year or as soon thereafter as may be practicable shall adopt and specify
actuarial assumptions for the system, which assumptions shall become part of the terms of this system.

§51-9-4. Required percentage contributions from salaries; any termination of required contributions prior to actual retirement disallowed; leased employees; military service credit; maximum allowable and qualified military service; qualifiable prosecutorial service.

(a) Every person who is now serving or shall hereafter serve as a judge of any court of record of this state shall pay into the judges' retirement fund six percent of the salary received by such person out of the state treasury: Provided, That when a judge becomes eligible to receive benefits from such trust fund by actual retirement, no further payment by him or her shall be required, since such employee contribution, in an equal treatment sense, ceases to be required in the other retirement systems of the state, also, only after actual retirement: Provided, however, That on and after the first day of January, one thousand nine hundred ninety-five, every person who is then serving or shall thereafter serve as a judge of any court of record in this state shall pay into the judges' retirement fund nine percent of the salary received by that person. Any prior occurrence or practice to the contrary, in any way allowing discontinuance of required employee contributions prior to actual retirement under this retirement system, is rejected as erroneous and contrary to legislative intent and as violative of required equal treatment and is hereby nullified and discontinued fully, with the state auditor to require such contribution in every instance hereafter, except where no contributions are required to be made under any of the provisions of this article.

(b) An individual who is a leased employee shall not be eligible to participate in the system. For purposes of this system, a "leased employee" means any individual who performs services as an independent contractor or pursuant to
an agreement with an employee leasing organization or other similar organization. If a question arises regarding the status of an individual as a leased employee, the board has the final power to decide the question.

(c) In drawing warrants for the salary checks of judges, the state auditor shall deduct from the amount of each such salary check six percent thereof, which amount so deducted shall be credited by the consolidated public retirement board to the trust fund: Provided. That on or after the first day of January, one thousand nine hundred ninety-five, the amount so deducted and credited shall be nine percent of each such salary check.

d) Any judge seeking to qualify military service to be claimed as credited service, in allowable aggregate maximum amount up to five years, shall be entitled to be awarded the same without any required payment in respect thereof to the judges’ retirement fund.

(e) Notwithstanding the preceding provisions of this section, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code. For purposes of this section, “qualified military service” has the same meaning as in Section 414(u) of the Internal Revenue Code. The retirement board is authorized to determine all questions and make all decisions relating to this section and may promulgate rules relating to contributions, benefits and service credit pursuant to the authority granted to the retirement board in section one, article ten-d, chapter five of this code to comply with Section 414(u) of the Internal Revenue Code.

(f) Any judge holding office as such on the effective date of the amendments to this article adopted by the Legislature at its regular session in the year one thousand nine hundred eighty-seven, who seeks to qualify service as a prosecuting attorney as credited service, which service credit must have
been earned prior to the year one thousand nine hundred eighty-seven, shall be required to pay into the judges’ retirement fund nine percent of the annual salary which was actually received by such person as prosecuting attorney during the time such prosecutorial service was rendered prior to the year one thousand nine hundred eighty-seven, and for which credited service is being sought, together with applicable interest. No judge whose term of office shall commence after the effective date of such amendments to this article shall be eligible to claim any credit for service rendered as a prosecuting attorney as eligible service for retirement benefits under this article, nor shall any time served as a prosecutor after the year one thousand nine hundred eighty-eight be considered as eligible service for any purposes of this article.

(g) The Legislature finds that any increase in salary for judges of courts of record directly affects the actuarial soundness of the retirement system for judges of courts of record and, therefore, an increase in the required percentage contributions of members of that retirement system is the same subject for purposes of determining the single object of this bill.

§51-9-6. Eligibility for and payment of benefits.

(a) Except as otherwise provided in sections five, twelve and thirteen of this article, and subject to the provisions of subsection (e) of this section, any person who is now serving, or who shall hereafter serve, as a judge of any court of record of this state and shall have served as such judge for a period of not less than sixteen full years and shall have reached the age of sixty-five years, or who has served as judge of such court or of that court and other courts of record of the state for a period of sixteen full years or more (whether continuously or not and whether said service be entirely before or after this article became effective, or partly before and partly after said date, and whether or not said judge shall be in office on the date he or she shall become eligible to benefits hereunder) and shall have
reached the age of sixty-five years, or who is now serving, or who shall hereafter serve, as a judge of any court of record of this state and shall have served as such judge for a period of not less than twenty-four full years, regardless of age, shall, upon a determination and certification of his or her eligibility as provided in section nine hereof, be paid from the fund annual retirement benefits, so long as he or she shall live, in an amount equal to seventy-five percent of the annual salary of the office from which he or she has retired based upon such salary of such office and as such salary may be changed from time to time during the period of his or her retirement and the amount of his or her retirement benefits shall be based upon and be equal to seventy-five percent of the highest annual salary of such office for any one calendar year during the period of his or her retirement, and shall be payable in monthly installments:

Provided, That such retirement benefits shall be paid only after such judge has resigned as such or, for any reason other than his or her impeachment, his or her service as such has ended:

Provided, however, That every such person seeking to retire and to receive the annual retirement benefits provided by this subsection must have served a minimum of twelve years as a sitting judge of any such court of record.

(b) Notwithstanding any other provisions of this article with the exception of sections twelve-a and twelve-b, any person who is now serving or who shall hereafter serve as a judge of any court of record of this state and who shall have accumulated sixteen years or more of credited service, at least twelve years of which is as a sitting judge of a court of record, and who has attained the age of sixty-two years or more but less than the age of sixty-five years, may elect to retire from his or her office and to receive the pension to which he or she would otherwise be entitled to receive at age sixty-five, but with an actuarial reduction of pension benefit to be established as a reduced annuity receivable throughout retirement. The reduced percentage (less than seventy-five percent) actuarially computed,
determined and established at time of retirement in respect of this reduced pension benefit shall also continue and be applicable to any subsequent new annual salary set for the office from which such judge has retired and as such salary may be changed from time to time during the period of his or her retirement.

(c) In determining eligibility for the benefits provided by this section, active full-time duty (including leaves and furloughs) in the armed forces of the United States shall be eligible for qualification as credited military service for the purposes of this article by any judge with twelve or more years actual service as a sitting judge of a court of record, such awardable military service to not exceed five years.

(d) If a judge of a court of record who is presently sitting as such on the effective date of the amendments to this section enacted by the Legislature at its regular session held in the year one thousand nine hundred eighty-seven, and who has served for a period of not less than twelve full years and has made payments into the judges’ retirement fund as provided in this article for each month during which he served as judge, following the effective date of this section, any portion of time which he or she had served as prosecuting attorney in any county in this state shall qualify as years of service, if such judge shall pay those sums required to be paid pursuant to the provisions of section four of this article: Provided, That any term of office as prosecuting attorney, or part thereof, commencing after the thirty-first day of December, one thousand nine hundred eighty-eight, shall not hereafter in any way qualify as eligible years of service under this retirement system.

(e) Any retirement benefit accruing under the provisions of this section shall not be paid if otherwise barred under the provisions of article ten-a, chapter five of this code.
§51-9-6a. Eligibility benefits; service and retirement of judges over sixty-five years of age.

Any judge of a court of record of this state, who shall have served for a period of not less than eight full years after attaining the age of sixty-five years and who shall have made payments into the judges' retirement fund as provided in this article for each month during which he or she served as such judge following the effective date of this section, shall be subject to all the applicable terms and provisions of this article, not inconsistent with the provisions hereof, and shall receive retirement benefits in an amount equal to seventy-five percent of the annual salary of the office from which he or she has retired based upon such salary of such office as such salary may be changed from time to time during the period of his or her retirement and the amount of his or her retirement benefits shall be based upon and be equal to seventy-five percent of the highest annual salary of such office for any one calendar year during the period of his or her retirement, and shall be payable in monthly installments. If such judge shall become incapacitated to perform his or her said duties before the expiration of his or her said term and after serving for six years thereof, and upon the acceptance of his or her resignation as in this article provided, he or she shall be paid the annual retirement benefits as herein provided so long as he or she shall live. The provisions of this section shall prevail over any language to the contrary in this article contained, except those provisions of sections twelve-a and twelve-b of this article.

§51-9-12a. Federal law maximum benefit limitations.

Notwithstanding any other provision of this article or state law, the board shall administer the retirement system in
compliance with the limitations of Section 415 of the Internal Revenue Code and regulations under that section to the extent applicable to governmental plans so that no annuity or other benefit provided under this system shall exceed those limitations. The extent to which any annuity or other benefit payable under this retirement system shall be reduced as compared with the extent to which an annuity, contributions or other benefits under any other defined benefit plans or defined contribution plans required to be taken into consideration under Section 415 of the Internal Revenue Code shall be reduced shall be determined by the board in a manner that shall maximize the aggregate benefits payable to the member. If the reduction is under this retirement system, the board shall advise affected members of any additional limitation on the annuities required by this section.

§51-9-12b. Federal minimum required distributions.

The requirements of this section apply to any distribution of a member’s or beneficiaries interest and take precedence over any inconsistent provisions of this retirement system. This section applies to plan years beginning after the thirty-first day of December, one thousand eight hundred eighty-six. Notwithstanding anything in the retirement system to the contrary, the payment of benefits under this article shall be determined and made in accordance with Section 401(a)(9) of the Internal Revenue Code and the regulations thereunder. For this purpose, the following provisions apply:

(a) The payment of benefits under the retirement system to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with treasury regulations prescribed under Section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her benefici-
(b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the retirement system has been distributed, then the remaining portion of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death.

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the retirement system shall be distributed by the thirty-first day of December of the calendar year containing the fifth anniversary of the member's death, except as follows:

(1) If a member's interest is payable to a beneficiary, distributions may be made over the life of that beneficiary or over a period certain not greater than the life expectancy of the beneficiary commencing on or before the thirty-first of December of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's beneficiary is the surviving spouse, the date distributions are required to begin shall be no later than the later of:

(A) The thirty-first day of December of the calendar year in which the member would have attained age seventy and one-half; or

(B) The earlier of: (i) The thirty-first day of December of the calendar year following the calendar year in which the member died; or (ii) the thirty-first day of December of the calendar year following the calendar year in which the spouse died.

§51-9-12c. Direct rollovers.
(a) This section applies to distributions made on or after the first day of January, one thousand nine hundred ninety-three. Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee’s election under this system, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution that is equal to at least five hundred dollars paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this section, the following definitions apply:

(1) “Eligible rollover distribution” means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any of the following: (i) Any distribution that is one of a series of substantially equal periodic payments not less frequently than annually made for the life or life expectancy of the distributee or the joint lives or the joint life expectancies of the distributee and the distributee’s designated beneficiary, or for a specified period of ten years or more; (ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; (iii) the portion of any distribution that is not includable in gross income determined without regard to the exclusion for net unrealized appreciation with respect to employer securities; (iv) any hardship distribution described in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code; and (v) any other distribution or distributions expected to total less than two hundred dollars during a year.

(2) “Eligible retirement plan” means an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code, or a qualified plan described in Section 401(a) of the Internal Revenue Code, that accepts the distributee’s eligible rollover distribution: Provided, That in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan
is an individual retirement account or individual retirement annuity.

(3) “Distributee” means judge or former judge. In addition, the judge’s or former judge’s surviving spouse and the judge’s or former judge’s spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code, with respect to governmental plans, are distributees with regard to the interest of the spouse or former spouse.

(4) “Direct rollover” means a payment by the system to the eligible retirement plan.

(b) Nothing in this section may be construed as permitting rollovers into this system or any other system administered by the board.

§51-9-14. Moneys exempt from execution, etc.; unassignable and nontransferable; exception for certain domestic relations orders.

The moneys in the judges’ retirement fund, the right of any judge to participate in the pay and benefits of the retirement system and the right of any judge to a refund of payments or contributions made to the fund shall not be subject to execution, garnishment, attachment or any other process whatsoever except that the benefits or contributions under this system shall be subject to “qualified domestic relations orders” as that term is defined in Section 414(p) of the Internal Revenue Code with respect to governmental plans; and shall be unassignable and nontransferable.

§51-9-17. Benefits not forfeited if system terminates.

If the retirement system is terminated or contributions are completely discontinued, the rights of all members to benefits accrued or contributions made to the date of such termination or discontinuance, to the extent then funded, may not be forfeited.
AN ACT to amend and reenact section fifteen, article ten, chapter 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 fifteen-b, all relating to public employees retirement; granting service credit for persons entering the active service of the armed forces of the United States during periods of compulsory military service; granting service credit for persons in the active service of the armed forces of the United States during periods of armed conflict; requirements needed to qualify for credit; defining terms; and authorizing legislative rules.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article ten, chapter 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 fifteen-b, all to read as follows:

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-15. Military service credit; periods of compulsory military service.
§5-10-15b. Military service credit; periods of armed conflict.

**§5-10-15. Military service credit; periods of compulsory military service.**

*Clerk's Note: This section was also amended by S. B. 652 (Chapter 204), which passed subsequent to this act.*
(a)(1) In addition to any benefit provided by federal law, any member of the retirement system who has previously served in or enters the active service of the armed forces of the United States during any period of compulsory military service shall receive credited service for said time spent in the armed forces of the United States, not to exceed five years if such member:

(A) Has been honorably discharged from the armed forces;

(B) Substantiates by appropriate documentation or evidence his or her active military service and entry therein during any period of compulsory military service; and

(C) Pays to the members’ deposit fund the amount he or she may have withdrawn therefrom, together with regular interest from the date of withdrawal to the date of repayment.

(2) Any member of the retirement system who enters the active service of the armed forces of the United States during any period of compulsory military service shall receive the credit provided by this section regardless of whether he or she was a public employee at the time of entering the military service.

(3) No member may receive the credit described in this section for any period for which the member has received credit under section ten-b of this article.

(b) In any case of doubt as to the period of service to be credited a member under the provisions of this section, the board of trustees shall have final power to determine such period.

(c) During the period of such armed service and until the member’s return to the employ of a participating public employer, the member’s contributions to the retirement system
shall be suspended and any credit balance remaining in the members’ deposit fund shall be accumulated at regular interest.

§5-10-15b. Military service credit; periods of armed conflict.

(a) The Legislature hereby recognizes the men and women of this state who have served in the armed forces of the United States during times of war, conflict and danger. It is the intent of this section to confer upon persons who are eligible at any time for public employees retirement benefits military service credits for any time served in active duty in the armed forces of the United States when such duty was during periods of armed conflict.

(b)(1) In addition to any benefit provided by federal law, any member of the retirement system who has previously served in or enters the active service of the armed forces of the United States during any period of armed conflict shall receive credited service for said time spent in active duty in the armed forces of the United States during the period of armed conflict, not to exceed five years if such member:

(A) Has been honorably discharged from the armed forces;

(B) Substantiates by appropriate documentation or evidence his or her active military service during periods of armed conflict; and

(C) Pays to the members’ deposit fund the amount he or she may have withdrawn therefrom, together with regular interest from the date of withdrawal to the date of repayment.

(2) Any member of the retirement system who previously served on active military duty during a period of armed conflict shall receive the credit provided by this section regardless of whether he or she was a public employee at the time of service.
(3) No member may receive the credit described in this section for any period for which the member has received credit under section ten of this article.

(c) In any case of doubt as to the period of service to be credited a member under the provisions of this section, the board of trustees shall have final power to determine such period.

(d) If a member of the public employees retirement system enters the active service of the United States and serves during any period of armed conflict, during the period of such armed service and until the member's return to the employ of a participating public employer, the member's contributions to the retirement system shall be suspended and any credit balance remaining in the members' deposit fund shall be accumulated at regular interest.

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

(1) "Period of armed conflict" means the Spanish-American War, the Mexican border period, World War I, World War II, the Korean conflict, the Vietnam era, the Persian Gulf War, and any other period of armed conflict by the United States, including, but not limited to, those periods sanctioned by a declaration of war by the United States Congress or by executive or other order of the president.

(2) "Spanish-American War" means the period beginning on the twenty-first day of April, one thousand eight hundred ninety-eight, and ending on the fourth day of July, one thousand nine hundred two, and includes the Philippine Insurrection, the Boxer Rebellion, and, in the case of a veteran who served with the United States military forces engaged in hostilities in the Moro Province, means the period beginning on the twenty-first day of April, one thousand eight hundred ninety-eight, and
ending on the fifteenth day of July, one thousand nine hundred three.

(3) “The Mexican border period” means the period beginning on the ninth day of May, one thousand nine hundred sixteen, and ending on the fifth day of April, one thousand nine hundred seventeen, in the case of a veteran who during such period served in Mexico, on the borders thereof or in the waters adjacent thereto.

(4) “World War I” means the period beginning on the sixth day of April, one thousand nine hundred seventeen, and ending on the eleventh day of November, one thousand nine hundred eighteen, and, in the case of a veteran who served with the United States military forces in Russia, means the period beginning on the sixth day of April, one thousand nine hundred seventeen, and ending on the first day of April, one thousand nine hundred twenty.

(5) “World War II” means the period beginning on the seventh day of December, one thousand nine hundred forty-one, and ending on the thirty-first day of December, one thousand nine hundred forty-six.

(6) “Korean conflict” means the period beginning on the twenty-seventh day of June, one thousand nine hundred fifty, and ending on the thirty-first day of January, one thousand nine hundred fifty-five.

(7) “The Vietnam era” means the period beginning on the twenty-eighth day of February, one thousand nine hundred sixty-one, and ending on the seventh day of May, one thousand nine hundred seventy-five, in the case of a veteran who served in the Republic of Vietnam during that period; and the fifth day of August, one thousand nine hundred sixty-four, and ending on the seventh day of May, one thousand nine hundred seventy-five, in all other cases.
(8) "Persian Gulf War" means the period beginning on the
second day of August, one thousand nine hundred ninety, and
ending on the eleventh day of April, one thousand nine hundred
ninety-one.

(9) The board is empowered to consider a petition by any
member whose tour of duty, in territory that would reasonably
be considered hostile and dangerous, was extended beyond the
period in which an armed conflict was officially recognized, if
that tour of duty commenced during a period of armed conflict,
and the member was assigned to duty stations within the hostile
territory throughout the period for which service credit is being
sought. The board has the authority to evaluate the facts and
circumstances peculiar to the petition, and rule on whether
granting service credit for the extended tour of duty is consis-
tent with the objectives of this article. In that determination, the
board is empowered to grant full credit for the period under
petition subject to the limitations otherwise applicable, or to
grant credit for any part of the period as the board deems
appropriate, or to deny credit altogether.

(f) The board of trustees may propose legislative rules for
promulgation in accordance with the provisions of article three,
chapter twenty-nine-a of this code to administer the provisions
of this section.
thirty-one, as amended, relating to membership in the public employees retirement system; allowing persons who retired under the deputy sheriff retirement system to become a member of the public employees retirement system without receiving credit for prior service in the deputy sheriff retirement system; clarifying that an active or retired member of any state teacher retirement system is excluded from membership in the public employees retirement system; and eliminating dual retirement system participation by employees of the state rail authority.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-17. Retirement system membership.

1 The membership of the retirement system consists of the following persons:

(a) All employees, as defined in section two of this article, who are in the employ of a political subdivision the day preceding the date it becomes a participating public employer and who continue in the employ of the participating public employer on and after that date shall become members of the retirement system; and all persons who become employees of a participating public employer on or after that date shall thereupon become members of the system; except as provided in subdivisions (b) and (c) of this section.

(b) The membership of the retirement system shall not include any person who is a member of, or who has been retired by, any of the state teachers retirement systems, the judges retirement system, the retirement system of the division of public safety, the deputy sheriff retirement system or any
municipal retirement system for either, or both, policemen or firemen; and the bureau of employment programs, by the commissioner of the bureau, may elect whether its employees will accept coverage under this article or be covered under the authorization of a separate enactment: Provided, That the exclusions of membership shall not apply to any member of the state Legislature, the clerk of the House of Delegates, the clerk of the state Senate or to any member of the legislative body of any political subdivision provided he or she once becomes a contributing member of the retirement system: Provided, however, That any retired member of the retirement system of the division of public safety, the deputy sheriff retirement system and any retired member of any municipal retirement system for either, or both, policemen or firemen may on and after the effective date of this section become a member of the retirement system as provided in this article, without receiving credit for prior service as a municipal policeman or fireman or as a member of the division of public safety or of the deputy sheriff retirement system: Provided further, That the membership of the retirement system does not include any person who becomes employed by the Prestera center for mental health services, valley comprehensive mental health center, Westbrook health services or eastern panhandle mental health center on or after the first day of July, one thousand nine hundred ninety-seven: And provided further, That membership of the retirement system does not include any person who becomes a member of the federal railroad retirement act on or after the first day of July, two thousand.

(c) Any member of the state Legislature, the clerk of the House of Delegates, the clerk of the state Senate and any employee of the state Legislature whose employment is otherwise classified as temporary and who is employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who has been or is so employed during regular sessions or during the
52 interim between sessions in seven consecutive calendar years,
53 as certified by the clerk of the house in which the employee
54 served, or any member of the legislative body of any other
55 political subdivision shall become a member of the retirement
56 system provided he or she notifies the retirement system in
57 writing of his or her intention to be a member of the system and
58 files a membership enrollment form as prescribed by the board
59 of trustees, and each person, upon filing his or her written
60 notice to participate in the retirement system, shall by that act
61 authorize the clerk of the House of Delegates or the clerk of the
62 state Senate or such person or legislative agency as the legisla-
63 tive body of any other political subdivision shall designate to
64 deduct the member's contribution, as provided in subsection
65 (b), section twenty-nine of this article, and after the deductions
66 have been made from the member's compensation, the deduc-
67 tions shall be forwarded to the retirement system.

68  (d) If question arises regarding the membership status of
69 any employee, the board of trustees has the final power to
70 decide the question.

CHAPTER 207

(H. B. 4317 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed March 11, 2000; in effect July 1, 2000. Approved by the Governor.]
relating to a minimum monthly retirement annuity for certain retired members of the public employees retirement system and the state teachers retirement system; qualifying years of service; and exclusion of certain service credit.

Be it enacted by the Legislature of West Virginia:

That article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty-two-f; and that article seven-a, chapter eighteen of said code be amended by adding thereto a new section, designated section twenty-six-r, 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.

18. Education.

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 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-22f. Minimum benefit for certain retirants; legislative declaration; state interest and public purpose.

The Legislature hereby finds and declares that an important state interest exists in providing a minimum retirement annuity for certain retirants (or their beneficiaries) who are credited with twenty or more years of credited service; that such program constitutes a public purpose; and that the exclusions of credited service while an elected public official or while a
temporary legislative employee are reasonable and equitable
exclusions for purposes of determining eligibility for such
minimum benefits. For purposes of this section: (1) "Elected
public official" means any member of the Legislature or any
member of the legislative body of any political subdivision; and
(2) "temporary legislative employee" means any employee of
the clerk of the House of Delegates, the clerk of the Senate, the
Legislature or a committee thereof whose employment is
classified as temporary and who is employed to perform
services required by the clerk of the House of Delegates, the
clerk of the Senate, the Legislature or a committee thereof, as
the case may be, for regular sessions, extraordinary sessions
and/or interim meetings of the Legislature.

If the retirement annuity of a retirant (or, if applicable, his
or her beneficiary) with at least twenty years of credited service
as of the effective date of this section is less than five hundred
dollars per month (including any supplemental benefits or
incentives provided by this article), then the monthly retirement
benefit for any such retired member (or if applicable, his or her
beneficiary) shall be increased to five hundred dollars per
month: Provided, That any year of credited service while an
elected public official or a temporary legislative employee shall
not be taken into account for purposes of this section.

The payment of any minimum benefit under this section
shall be in lieu of, and not in addition to, the payments of any
retirement benefit or supplemental benefit or incentives
otherwise provided by law: Provided, That the minimum
benefit provided herein shall be subject to any limitations
thereon under §415 of the Internal Revenue Code of 1986, as
amended.

Any minimum benefit conferred herein shall not be
retroactive to the time of retirement and shall apply only to
members who have retired prior to the effective date of this
section, or, if applicable, to beneficiaries receiving benefits under the retirement system prior to the effective date.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-26r. Minimum benefit for certain retired members; legislative declaration; state interest and public purpose.

The Legislature hereby finds and declares that an important state interest exists in providing a minimum retirement annuity for certain retired members who are credited with twenty or more years of total service; that such program constitutes a public purpose; and that the exclusion of total service for certain employees of institutions of higher education is a reasonable and equitable exclusion for purposes of determining eligibility for such minimum benefits.

If the retirement annuity of a retired member (or if applicable, a spouse thereof) with at least twenty years of total service is less than five hundred dollars per month (including any supplemental or additional benefits provided by this article), then the monthly retirement annuity for any such retired member shall be increased to five hundred dollars per month: Provided, That any year of service while an employee of an institution of higher education shall not be taken into account for purposes of this section if his or her salary is capped under the retirement system at four thousand eight hundred dollars per year pursuant to section fourteen-a of this article.

The payment of any minimum benefit under this section shall be in lieu of, and not in addition to, the payments of any retirement annuity or supplemental or additional benefits otherwise provided by this article: Provided, That the minimum benefit provided herein shall be subject to any limitations
thereon under §415 of the Internal Revenue Code of 1986, as the same may be amended.

Any minimum benefit conferred herein shall not be retroactive to the time of retirement and shall apply only to members who have retired prior to the effective date of this section, or, if applicable, to beneficiaries receiving benefits under the retirement system prior to the effective date.

The minimum benefit provided herein shall be subject to a recommendation by the governor for such minimum benefit through the delivery of an executive message to the Legislature and an appropriation by the Legislature for such minimum benefit, such appropriation to be made over a continuous six-year period following the effective date of this section.

CHAPTER 208

(Com. Sub. for S. B. 215 — By Senators Plymale, Fanning, Walker, Sprouse, Jackson, Edgell, McCabe, Snyder, Ross, Minard and Dawson)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-three, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article seven-a, chapter eighteen of said code by adding thereto a new section, designated section twenty-three-a, all relating to the public employees retirement system and the teachers' retirement system; and providing for terminal benefit payments and the return of any remaining employee contributions.

Be it enacted by the Legislature of West Virginia:
That section twenty-three, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that article seven-a, chapter eighteen of said code be amended by adding thereto a new section, designated section twenty-three-a, 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.

18. Education.

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 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-23. Terminal payment.

For the purposes of this section, the term “accumulated net benefit” means the aggregate amount of all benefits paid to or on behalf of a member. This includes, without limitation: (a) Benefits paid to the member as an annuity; (b) any lump sum distributions paid to the member or to any other person on account of the member’s rights to benefits from the plan; (c) survivor benefits paid to any person or persons on account of the member’s rights to benefits from the plan; and (d) any other distributions on account of the member’s rights to benefits from the plan whether they are paid in the nature of a refund of contributions, interest on contributions, lump sum distributions, or annuity type benefits. The amounts counted will be the amounts actually paid without regard to any optional form of any annuity benefit.
For the purposes of this section, the term “accumulated employee contributions” means all money the member has contributed to the plan, whether the form of the contribution was after tax deductions from wages, before tax deductions from wages, direct remittance by the member to repay contributions and interest previously distributed and direct remittance by the member to pay imputed contributions for periods which were not subject to contributions but may be counted for benefit purposes under the plan. The term accumulated employee contributions does not include any amount credited under the provisions of the plan as interest on member contributions.

For the purposes of this section, the term “member’s account” means the excess of the accumulated employee contributions over the accumulated net benefit payments at any point in time and the term “member” includes retirant. This section provides for the payment of the balance in the member’s account in the event that all claims to benefits payable to, or on behalf of, a member expire before his or her member account has been fully exhausted. The expiration of such rights to benefits would be on the occasion of the death of the member and any and all beneficiaries who might have a claim to regular benefit payments under the plan, for any form of benefit. Without limitation, this would include the demise of beneficiaries of survivor annuities and beneficiaries of any lump sum distributions.

In the event that all claims to benefit payable to, or on behalf of, a member expire, and the accumulated employee contributions exceed his or her accumulated net benefit payments, the balance in the member’s account shall be paid to the person or persons as the member has nominated by written designation duly executed and filed with the board of trustees. If there be no designated person or persons surviving the member, the excess of the accumulated employee contributions
over the accumulated net benefit, if any, shall be paid to his or her estate. In no case may the plan retain any amount of the accumulated employee contributions remaining in the member's account, but it shall retain interest earned on the same accumulated employee contributions in the instance of a member's or beneficiary's post-retirement death.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-23a. Terminal benefits.

For the purposes of this section, the term "accumulated net benefit" means the aggregate amount of all benefits paid to or on behalf of a member. This includes, without limitation: (a) Benefits paid to the member as an annuity; (b) any lump sum distributions paid to the member or to any other person on account of the member's rights to benefits from the plan; (c) survivor benefits paid to any person or persons on account of the member's rights to benefits from the plan; and (d) any other distributions on account of the member's rights to benefits from the plan whether they are paid in the nature of a refund of contributions, interest on contributions, lump sum distributions, or annuity type benefits. The amounts counted will be the amounts actually paid without regard to any optional form of any annuity benefit.

For the purposes of this section, the term "accumulated employee contributions" means all money the member has contributed to the plan, whether the form of the contribution was after tax deductions from wages, before tax deductions from wages, direct remittance by the member to repay contributions and interest previously distributed and direct remittance by the member to pay imputed contributions for period which were not subject to contributions but may be counted for benefit purposes under the plan. The term accumulated employee
contributions does not include any amount credited under the provisions of the plan as interest on member contributions.

For the purposes of this section, the term "member's account" means the excess of the accumulated employee contributions over the accumulated net benefit payments at any point in time and the term "member" includes each individual who has contributed, or will contribute in the future, to the teachers retirement system, including each retirant. This section provides for the payment of the balance in the member's account to paid in the manner described herein in the event that all claims to benefits payable to, or on behalf of, a member expire before his or her member account has been fully exhausted. The expiration of such rights to benefits would be on the occasion of the death of the member and any and all beneficiaries who might have a claim to regular benefit payments under the plan, for any form of benefit. Without limitation, this would include the demise of beneficiaries of survivor annuities and beneficiaries of any lump sum distributions.

In the event that all claims to benefits payable to, or on behalf of, a member expire, and the accumulated employee contributions exceed his or her accumulated net benefit payments, the balance in the member’s account shall be paid to the person or persons as the member has nominated by written designation duly executed and filed with the board of trustees. If there be no designated person or persons surviving the member, the excess of the accumulated employee contributions over the accumulated net benefit, if any, shall be paid to his or her estate. In no case may the plan retain any amount of the accumulated employee contributions remaining in the member’s account, but it shall retain interest earned on the same accumulated employee contributions in the instance of a member’s or beneficiary’s post-retirement death.
AN ACT to amend and reenact section twenty-four, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia public employees retirement act; annuity options; providing options when a member obtains a divorce; and requiring a divorced member to prove that there is no qualified domestic relations order in effect as a condition for the member to elect certain annuity options.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.


1 Prior to the effective date of his or her retirement, but not thereafter except upon the death of a spouse, a member may elect to receive his or her annuity as a straight life annuity payable throughout his or her life, or he or she may elect to receive the actuarial equivalent, at the time, of his or her straight life annuity in a reduced annuity payable throughout his or her life, and nominate a beneficiary, in accordance with option A or B set forth below:
Option A — Joint and survivor annuity. — Upon the death of a retirant who elected option A, his or her reduced annuity shall be continued throughout the life of and paid to the beneficiary, having an insurable interest in the retirant’s life, whom the retirant nominated by written designation duly executed and filed with the board of trustees prior to the effective date of his or her retirement; or

Option B — Modified joint and survivor annuity. — Upon the death of a retirant who elected option B, one half of his or her reduced annuity shall be continued throughout the life of and paid to the beneficiary, having an insurable interest in the retirant’s life, whom the retirant nominated by written designation duly executed and filed with the board of trustees prior to the effective date of his or her retirement.

Upon the death of a spouse, a retirant may elect any of the retirement options offered by the provisions of this section in an amount adjusted on a fair basis to be of equal actuarial value as the annuity prospectively in effect relative to the surviving member at the time the new option is elected.

Upon divorce, a member may elect to change any of the retirement benefit options offered by the provisions of this section to a life annuity in an amount adjusted on a fair basis to be of equal actuarial value of the annuity prospectively in effect relative to the retirant at the time the option is elected: Provided, That the retirant furnishes to the board satisfactory proof of entry of a final decree of divorce or annulment: Provided, however, That the retirant certifies under penalty of perjury that no qualified domestic relations order that would restrict such an election is in effect: Provided further, That no cause of action against the board may then arise or be maintained on the basis of having permitted the retirant to name a new spouse as annuitant for any of the survivorship retirement benefit options.
Upon remarriage, a retirant may name the new spouse as an annuitant for any of the retirement benefit options offered by the provisions of this section: Provided, That the beneficiary shall furnish to the board proof of marriage: Provided, however, That the retirant certifies under penalty of perjury that no qualified domestic relations order that would restrict such a designation is in effect: Provided further, That no cause of action against the board may then arise or be maintained on the basis of having permitted the retirant to name a new spouse as annuitant for any of the survivorship retirement benefit options. The value of the new survivorship annuity shall be the actuarial equivalent of the retirant’s benefit prospectively in effect at the time the new annuity is elected.
§5-10D-7. Compensation limitations; effective dates.

Effective for plan years beginning after the thirty-first day of December, one thousand nine hundred ninety-five, the annual compensation of a participant taken into account in determining benefits or contributions under any of the public retirement plans administered by the board and which are qualified plans under section 401(a)(17) of the Internal Revenue Code may not exceed one hundred fifty thousand dollars, as indexed. This provision shall apply notwithstanding any other provision to the contrary in this code and not withstanding any provisions of any legislative rule.

CHAPTER 211

(H.B. 4101 — By Delegates Jenkins, Hubbard, J. Smith, Campbell, Williams, Hall and Harrison)

[Passed March 9, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to definitions of terms pertaining to interest rates used in teacher retirement legislation.

Be it enacted by the Legislature of West Virginia:

That section three, article seven-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 7A. STATE TEACHERS RETIREMENT SYSTEM.

“Teacher member” means the following persons, if regularly employed for full-time service: (a) Any person employed for instructional service in the public schools of West Virginia; (b) principals; (c) public school librarians; (d) superintendents of schools and assistant county superintendents of schools; (e) any county school attendance director holding a West Virginia teacher’s certificate; (f) the executive secretary of the retirement board; (g) members of the research, extension, administrative or library staffs of the public schools; (h) the state superintendent of schools, heads and assistant heads of the divisions under his supervision, or any other employee thereunder performing services of an educational nature; (i) employees of the state board of education who are performing services of an educational nature; (j) any person employed in a nonteaching capacity by the state board of education, the West Virginia board of regents [abolished], any county board of education, the state department of education or the teachers retirement board, if such person was formerly employed as a teacher in the public schools; (k) all classroom teachers, principals and educational administrators in schools under the supervision of the department of corrections, the division of health or the division of human services; and (l) employees of the state board of school finance, if such person was formerly employed as a teacher in the public schools.

“Nonteaching member” means any person, except a teacher member, who is regularly employed for full-time service by: (a) Any county board of education; (b) the state board of education; (c) the West Virginia board of regents [abolished]; or (d) the teachers retirement board.

“Members of the administrative staff of the public schools” means deans of instruction, deans of men, deans of women, and financial and administrative secretaries.

“Members of the extension staff of the public schools” means every agricultural agent, boys’ and girls’ club agent, and
every member of the agricultural extension staff whose work is not primarily stenographic, clerical or secretarial.

"Retirement system" means the state teachers retirement system provided for in this article.

"Present teacher" means any person who was a teacher within the thirty-five years beginning the first day of July, one thousand nine hundred thirty-four, and whose membership in the retirement system is currently active.

"New entrant" means a teacher who is not a present teacher.

"Regularly employed for full-time service" means employment in a regular position or job throughout the employment term regardless of the number of hours worked or the method of pay.

"Employment term" means employment for at least ten months, a month being defined as twenty employment days.

"Present member" means a present teacher who is a member of the retirement system.

"Total service" means all service as a teacher while a member of the retirement system since last becoming a member and, in addition thereto, credit for prior service, if any.

"Prior service" means all service as a teacher completed prior to the first day of July, one thousand nine hundred forty-one, and all service of a present member who was employed as a teacher, and did not contribute to a retirement account because he was legally ineligible for membership during the service.

"Average final salary" means the average of the five highest fiscal year salaries earned as a member within the last fifteen fiscal years of total service credit, including military service as provided herein, or if total service is less than fifteen
years, the average annual salary for the period on which contributions were made.

"Accumulated contributions" means all deposits and all deductions from the earnable compensation of a contributor minus the total of all supplemental fees deducted from his compensation.

"Regular interest" means interest at three percent compounded annually, or a higher earnable rate if set forth in the formula established in legislative rules, series seven of the consolidated public retirement board.

"Refund interest" means interest compounded, according to the formula established in legislative rules, series seven of the consolidated public retirement board.

"Employer" means the agency of and within the state which has employed or employs a member.

"Contributor" means a member of the retirement system who has an account in the teachers accumulation fund.

"Beneficiary" means the recipient of annuity payments made under the retirement system.

"Refund beneficiary" means the estate of a deceased contributor, or a person as he shall have nominated as beneficiary of his contributions by written designation duly executed and filed with the retirement board.

"Earnable compensation" means the full compensation actually received by members for service as teachers whether or not a part of the compensation is received from other funds, federal or otherwise, than those provided by the state or its subdivisions. Allowances from employers for maintenance of members shall be considered a part of earnable compensation for such members whose allowances were approved by the teachers retirement board and contributions to the teachers
Annuities" means the annual retirement payments for life granted beneficiaries in accordance with this article.

"Member" means a member of the retirement system.

"Public schools" means all publicly supported schools, including normal schools, colleges and universities in this state.

"Deposit" means a voluntary payment to his account by a member.

The masculine gender shall be construed so as to include the feminine.

Age in excess of seventy years shall be considered to be seventy years.

CHAPTER 212

(H. B. 4575 — By Delegates H. White, Mezzatesta, Jenkins, Kominar, Michael and Hubbard)

[Passed March 11, 2000; in effect July 1, 2000. Approved by the Governor.]

AN ACT to amend article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fourteen-b, relating to the state teachers retirement system; permitting members the option to purchase service credit for time periods they were absent from work and receiving temporary total disability payments; setting forth cost to purchase such service credit; establishing applicable time periods; and setting forth a window of time during which such purchase must occur.

Be it enacted by the Legislature of West Virginia:
That article seven-a, 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 fourteen-b, to read as follows:

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

*§18-7A-14b. Members' option to make contributions for periods of temporary total disability.

1 Any member who was absent from work while receiving temporary total disability benefits pursuant to the provisions of chapter twenty-three of this code as a result of a compensable injury received in the course of and as a result of his or her employment with the covered employer during the time period beginning the first day of January, one thousand nine hundred eighty-eight and the thirty-first day of December, one thousand nine hundred ninety-eight, may purchase credited service for that time period or those time periods the member was absent from work as a result of a compensable injury and receiving temporary total disability benefits: Provided, That the member returned to work with his or her covered employer within one year following the cessation of temporary total disability benefits. The member desiring to purchase such credited service may do so only by lump sum payment from personal funds: Provided, however, That the purchase of service credit pursuant to the provisions of this section shall be completed between the time period beginning the first day of July, two thousand and ending the thirtieth day of June, two thousand one: Provided further, That in order to purchase such service credit, the member shall pay to the board his or her regular contribution and an equal amount that represents the employer's contribution, based on the salary the member was receiving immediately prior to having sustained such compensable injury: And provided further, That the member purchasing service credit under the provisions of this section may not be charged interest. The maximum number of years of service credit that may be purchased under this section shall not exceed two.

*Clerk's Note: This section was also amended by S. B. 652 (Chapter 204), which passed subsequent to this act.
CHAPTER 213

(H. B. 4541 — By Delegates Jenkins, Campbell, Williams, J. Smith, Harrison, Hubbard and Hall)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-four, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the disposition of accumulated contributions in the teacher retirement system.

Be it enacted by the Legislature of West Virginia:

That section twenty-four, article seven-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 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-24. Disposition of accumulated contributions upon cessation of membership.

1 When a contributor with fewer than five years of service ceases to be a member because of absence from service as a teacher, his or her accumulated contributions with refund interest up to and including the fiscal year in which his or her membership ceased, shall be returned to him or her, or to his or her legal representative. Five years after cessation of membership, if such contributor or his or her legal representative cannot be found, his accumulated contributions with refund interest shall be forfeited to the retirement system and credited to the reserve fund.
CHAPTER 214

(Com. Sub. for S. B. 211 — By Senators Plymale, Fanning, Walker, Sprouse, Jackson, Edgell, McCabe, Snyder, Ross, Bowman, Hunter, Minard, McKenzie and Redd)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-eight, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the state teachers retirement system; and providing for the rights of members to name annuitants.

Be it enacted by the Legislature of West Virginia:

That section twenty-eight, article seven-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 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-28. Options to beneficiaries; change of certain options because of divorce or annulment; limitation on recalculated monthly benefits.

1 The retirement board is hereby authorized to offer plans, optional with the beneficiary, for the payment of allowances due such beneficiary for retirement, withdrawal or prior service pensions under the retirement system. No plans shall be offered, however, which are not approved by competent actuaries.

6 When a beneficiary and his or her spouse have been approved for a retirement plan which provides for them a joint life annuity, and their marriage is subsequently dissolved, the board shall permit such beneficiary to convert to the maximum life annuity plan approved by the board: Provided, That the
beneficiary shall furnish to the board proof of entry of a final
decree of divorce or annulment: Provided, however, That a
beneficiary who qualifies for the change of retirement plans
afforded by this section shall be permitted only one such
change: Provided further, That the recalculated monthly
benefits, independently of increases granted by law after the
beneficiary’s retirement, shall not exceed the monthly benefits
which would have been applicable under the maximum life
annuity plan at the time the beneficiary retired; and with such
recalculation to be effective on the first day of the month
following submission to the board by the beneficiary of proof
of entry of a final decree of divorce or annulment.

Upon remarriage, a retirant may name the new spouse as an
annuitant for any of the survivorship retirement benefit options
offered by the provisions of this section: Provided, That the
beneficiary shall furnish to the retirement board satisfactory
proof of the marriage: Provided, however, That the retirant
certifies under penalty of perjury that no qualified domestic
relations order that would restrict such a designation is in
effect: Provided further, That no cause or action against the
board may then arise or be maintained on the basis of having
permitted the retirant to name a new spouse as annuitant for any
of the survivorship retirement benefit options. The value of the
new survivorship annuity shall be the actuarial equivalent of the
retirant’s benefit prospectively in effect at the time the new
annuity is elected.

CHAPTER 215
(Com. Sub. for H. B. 4049 — By Delegate Warner)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]
hundred thirty-one, as amended; and to amend said article by
adding thereto a new section, designated section seventeen-d, all
relating to the payment of utilities on highway construction
projects.

Be it enacted by the Legislature of West Virginia:

That section seventeen-b, article four, chapter seventeen 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
seventeen-d, all to read as follows:

ARTICLE 4. STATE ROAD SYSTEM.

§17-4-17b. Relocation of public utility lines to accommodate federal-aid highway
projects.

§17-4-17d. Relocation of public utility lines on state highway construction projects.

§17-4-17b. Relocation of public utility lines to accommodate
federal-aid highway projects.

(a) Whenever the commissioner of highways determines
that any public utility line or facility located upon, across or
under any portion of a state highway needs to be relocated in
order to accommodate a federal-aid interstate or Appalachian
highway project, he or she shall notify the public utility owning
or operating the facility which shall relocate the same in
accordance with the order of the commissioner. The cost of the
relocation shall be paid out of the state road fund in all cases
involving the interstate or the Appalachian system where
proportionate reimbursement of the cost shall be obtained by
the commissioner of highways from the United States pursuant
to the “Federal Aid Highway Act of 1956” or the “Appalachian
Regional Development Act of 1965,” as amended, and all acts
amendatory or supplementary thereto: Provided, That the cost
of any relocation of municipally owned utility facilities and
water or sanitary districts or authorities shall be paid out of state
17 road funds in any case involving any federal-aid system where
18 proportionate reimbursement of such cost shall be obtained by
19 the commissioner of highways from the United States.

20 (b) For the purposes of this section, the term, “cost of
21 relocation,” includes the entire amount paid by the utility,
22 exclusive of any right-of-way costs incurred by the utility,
23 properly attributable to the relocation after deducting therefrom
24 any increase in the value of the new facility and salvage value
25 derived from the old facility.

26 The cost of relocating utility facilities, as defined in this
27 section, in connection with any federal-aid interstate or Appala-
28 chian highway project is hereby declared to be a cost of
29 highway construction.

30 (c) The commissioner of highways is hereby authorized to
31 include within the cost of highway construction the cost of
32 relocation necessarily incurred by any public utility, and any
33 pipeline company subject to the jurisdiction of the federal
34 energy regulatory commission, in relocating any public utility
35 line, pipeline or facility as a result of the construction of any
36 fully or partially controlled access highway as a part of the
37 national highway system as authorized by the “Federal
38 Intermodal Surface Transportation Efficiency Act of 1991”, and
39 all acts amendatory and supplementary thereto as of the
40 twentieth day of March, one thousand nine hundred
41 ninety-three. The provisions of article five-a, chapter
42 twenty-one of this code apply to all work performed pursuant
43 to the provisions of this subsection.

44 (d) Any notice required by this section is sufficient if given
45 by registered or certified mail, return receipt requested,
46 addressed to any officer of the utility or to an individual if the
47 person to whom the notice is required is an individual.
§17-4-17d. Relocation of public utility lines on state highway construction projects.

(a) Whenever the commissioner of highways determines that any public utility line owned by a county or municipal governmental body located upon, across or under any portion of a state highway needs to be relocated in order to accommodate a highway project for which proportionate reimbursement of the cost is not available from any federal program, the commissioner shall notify the public utility owning or operating the facility which shall relocate the same in accordance with the order of the commissioner, and the cost of the relocation shall be paid out of the state road fund.

(b) The commissioner may propose legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to provide for reimbursement of privately held public utilities for the cost of relocation, due to the division of highways construction or improvement projects, of their public utility lines located upon, across or under any portion of a state highway in order to accommodate a highway project for which proportionate reimbursement of the cost is not available from any federal program, with the cost of the relocation to be paid out of the state road fund.

(c) For the purpose of this section, the term "cost of relocation" includes the entire amount paid by the utility, exclusive of any right-of-way costs incurred by the utility, properly attributable to the relocation after deducting therefrom any increase in the value of the new facility and salvage value derived from the old facility.

(d) Any notice required by this section is sufficient if given by registered mail or certified mail, return receipt requested, addressed to any officer of the utility or to an individual if the person to whom notice is required is an individual.
AN ACT to amend article seventeen, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-seven, relating to giving a county commission the opportunity to assume the ownership and control of a toll bridge in the event the municipality which owns and operates the bridge chooses not to retain ownership of the bridge.

Be it enacted by the Legislature of West Virginia:

That article seventeen, chapter seventeen 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-seven, to read as follows:

ARTICLE 17. TOLL BRIDGES.

§17-17-37. Transfer of toll bridge to county.

1 Notwithstanding any provision of this code to the contrary, in the event the municipality which owns and operates a toll bridge does not retain ownership of the bridge under the provisions of section thirty-five of this article, the county commission of the county in which the municipality is located has the option to take over the ownership and operation of the bridge. The commissioner of the division of highways shall notify the county commission in writing when the opportunity to exercise the option exists. The county commission has ninety
10 days from receipt of the notification to exercise its option. If the
11 county commission decides to assume the ownership and
12 control of the bridge, it shall comply with all applicable
13 provisions of this article that are imposed on a municipality that
14 chooses to retain ownership of a toll bridge.

CHAPTER 217

(Com. Sub. for H. B. 4063 — By Delegates Flanigan and Prunty)

[Passed March 9, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter seventeen of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, by adding
thereto a new article, designated article twenty, relating to
authorizing legislative rules providing for the placement of
roadside memorial markers or other tributes within state highway
rights-of-way to memorialize people who have died as a result of
vehicle related accidents; provisions of rules; and removal of
markers or tributes.

Be it enacted by the Legislature of West Virginia:

That chapter seventeen 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, to read as follows:

ARTICLE 20. ROADSIDE MEMORIAL MARKERS.

§17-20-1. Roadside memorial markers authorized.
§17-20-2. Roadside memorial marker criteria.

§17-20-1. Roadside memorial markers authorized.

1 Notwithstanding any provision of section one, article
2 nineteen of this chapter to the contrary, the commissioner of
3 highways is authorized to propose legislative rules for promul-
4 gation in accordance with the provisions of chapter twenty-
5 nine-a of this code providing for the placement of memorial
markers or other tributes within state highway rights-of-way to memorialize people who have died as a result of vehicle related accidents.

§17-20-2. Roadside memorial marker criteria.

(a) Legislative rules proposed pursuant to section one of this article shall provide for the placement of markers in a manner that increases public awareness of highway safety and promotes the safe use of the highways and their rights-of-way. The rules shall prescribe circumstances under which:

(1) Memorial markers may be placed near to where a fatal accident occurred, considering available space, property owner complaints or other constraints; and

(2) Decorations, flowers or other memorial ornaments or tributes may be placed on the right-of-way by family members.

(b) Notwithstanding any provision of the rules to the contrary, the commissioner may direct or cause the removal of any memorial marker or tribute from a state highway right-of-way, without notice, upon the determination by the commissioner that the removal is necessary for construction, maintenance, safety or other purpose. The state of West Virginia, its agencies and subdivisions, and their officers and employees shall not be liable for any claims arising as a result of the removal of a marker or tribute.

CHAPTER 218

(H. B. 4603 — By Mr. Speaker, Mr. Kiss, and Delegare Trump)
[By Request of the Executive]

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]
adding thereto a new section, designated section three-a, relating
to establishing an executive compensation commission and
setting forth the duties and responsibilities of the commission.

Be it enacted by the Legislature of West Virginia:

That article one, chapter five-f 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 1. GENERAL PROVISIONS.

§5F-1-3a. Executive compensation commission.

1 There is hereby created an executive compensation com-
mission composed of three members, one of whom shall be the
secretary of administration, one of whom shall be appointed by
the governor from the names of two or more nominees submit-
ted by the president of the Senate, and one of whom shall be
appointed by the governor from the names of two or more
nominees submitted by the speaker of the House of Delegates.
The names of such nominees shall be submitted to the governor
by not later than the first day of June in the year two thousand,
and the appointment of such members shall be made by the
governor by not later than the first day of July in the year two
thousand. The members appointed by the governor shall have
had significant business management experience at the time of
their appointment and shall serve without compensation other
than reimbursement for their reasonable expenses necessarily
incurred in the performance of their commission duties. For the
regular session of the Legislature, two thousand one, and every
four years thereafter, the commission shall review the compen-
sation for cabinet secretaries and other appointed officers of this
state, including, but not limited to, the following: Commissioner,
division of highways; commissioner, bureau of employment
programs; director, division of environmental protection;
commissioner, bureau of senior services; director of tourism;
commissioner, division of tax; administrator, division of health; commissioner, division of corrections; director, division of natural resources; superintendent, state police; administrator, lottery division; director, public employees insurance agency; administrator, alcohol beverage control commission; commissioner, division of motor vehicles; director, division of personnel; adjutant general; chairman, health care authority; members, health care authority; director, division of rehabilitation services; executive director, educational broadcasting authority; executive secretary, library commission; chairman and members of the public service commission; director of emergency services; administrator, division of human services; executive director, human rights commission; director, division of veterans affairs; director, office of miner’s health safety and training; commissioner, division of banking; commissioner, division of insurance; commissioner, division of culture and history; commissioner, division of labor; director, prosecuting attorneys institute; director, board of risk and insurance management; commissioner, oil and gas conservation commission; director, geological and economic survey; executive director, water development authority; executive director, public defender services; director, state rail authority; chairman and members of the parole board; members, employment security review board; members, workers’ compensation appeal board; chairman, racing commission; executive director, women’s commission; and director, hospital finance authority.

Following this review, but not later than the twenty-first day of such regular session, the commission shall submit an executive compensation report to the Legislature to include specific recommendations for adjusting the compensation for the officers described in this section. The recommendation may be in the form of a bill to be introduced in each house to amend this section to incorporate the recommended adjustments.
AN ACT to amend and reenact section two, article two-c, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one-a, two, two-a, three, four, five, eight and nine, article twelve of said chapter, all relating to the central abuse and the sex offender registries; declaring a reduced expectation of privacy for sex offenders; including persons convicted of certain attempted offenses and persons found not guilty by reason of mental illness, mental retardation or addiction within registration requirements; adding required registration information from sex offenders; requiring the department of health and human resources to obtain information; adding persons found not guilty by reason of mental illness, mental retardation or addiction in duration determination; adding entities that receive information on sex offenders; providing that failure to provide notice of changes in registration information constitutes a criminal offense; requiring notice to certain offenders; increasing penalties for certain offenders who fail to provide information; requiring registration of out-of-state persons who visit this state and who have been convicted of an offense similar to an offense requiring registration in this state or in the state of residence; and requiring registration of certain offenders moving to this state.

Be it enacted by the Legislature of West Virginia:
That section two, article two-c, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections one-a, two, two-a, three, four, five, eight and nine, article twelve of said chapter be amended and reenacted, all to read as follows:

Article
2C. Central Abuse Registry.
12. Sex Offender Registration Act.

ARTICLE 2C. CENTRAL ABUSE REGISTRY.

§15-2C-2. Central abuse registry; required information; procedures.

(a) The criminal identification bureau of the West Virginia state police shall establish a central abuse registry, to contain information relating to criminal convictions involving child abuse or neglect, abuse or neglect of an incapacitated adult and misappropriation of property by individuals specified in subsection (b) of this section and information relating to individuals required to be registered as a sex offender.

(b) The central abuse registry shall contain, at a minimum, information relating to: Convictions of a misdemeanor or a felony involving abuse, neglect or misappropriation of property, by an individual performing services for compensation, within the scope of the individual’s employment or contract to provide services, in a residential care facility, in a licensed day care center, or in connection with the provision of home care services; information relating to individuals convicted of specific offenses enumerated in subsection (a), section three of this article with respect to a child or an incapacitated adult; and information relating to all individuals required to register with the West Virginia state police as sex offenders pursuant to the provisions of article twelve, chapter fifteen of this code. The central abuse registry shall contain the following information:

(1) The individual’s full name;
(2) Sufficient information to identify the individual, including date of birth, social security number and fingerprints if available;

(3) Identification of the criminal offense constituting abuse, neglect or misappropriation of property of a child or an incapacitated adult;

(4) For cases involving abuse, neglect or misappropriation of property of a child or an incapacitated adult in a residential care facility or a day care center, or of a child or an incapacitated adult receiving home care services, sufficient information to identify the location where the documentation of any investigation by the department of health and human resources is on file and the location of pertinent court files; and

(5) Any statement by the individual disputing the conviction, if he or she chooses to make and file one.

(c) Upon conviction in the criminal courts of this state of a misdemeanor or a felony offense constituting child abuse or neglect or abuse or neglect of an incapacitated adult, the individual so convicted shall be placed on the central abuse registry.

ARTICLE 12. SEX OFFENDER REGISTRATION ACT.

§15-12-1a. Intent and findings.

§15-12-2. Registration.

§15-12-2a. Court determination of sexually violent predator.

§15-12-3. Change in registry information.

§15-12-4. Duration.

§15-12-5. Distribution and disclosure of information; community information programs by prosecuting attorney and state police; petition to circuit court.

§15-12-8. Failure to register or provide notice of registration changes; penalty.


§15-12-1a. Intent and findings.
(a) It is the intent of this article to assist law-enforcement agencies’ efforts to protect the public from sex offenders by requiring sex offenders to register with the state police detachment in the county where he or she shall reside and by making certain information about sex offenders available to the public as provided in this article. It is not the intent of the Legislature that the information be used to inflict retribution or additional punishment on any person convicted of any offense requiring registration under this article. This article is intended to be regulatory in nature and not penal.

(b) The Legislature finds and declares that there is a compelling and necessary public interest that the public have information concerning persons convicted of sexual offenses in order to allow members of the public to adequately protect themselves and their children from these persons.

(c) The Legislature also finds and declares that persons required to register as sex offenders pursuant to this article have a reduced expectation of privacy because of the state’s interest in public safety.

§15-12-2. Registration.

(a) The provisions of this article apply both retroactively and prospectively.

(b) Any person who has been convicted of an offense or an attempted offense or has been found not guilty by reason of mental illness, mental retardation or addiction of an offense under any of the following provisions of chapter sixty-one of this code or under a similar provision in another state, federal or military jurisdiction shall register as set forth in subsection (d) of this section and according to the internal management rules promulgated by the superintendent under authority of section twenty-five, article two, chapter fifteen of this code:

(1) Article eight-b;
(2) Article eight-c;
(3) Sections five and six, article eight-d;
(4) Section fourteen, article two; or
(5) Sections six, seven, twelve and thirteen, article eight.

(c) Any person who has been convicted of a criminal offense, which at the time of sentencing was found by the sentencing judge to have been sexually motivated, shall also register as set forth in this article.

(d) Persons required to register under the provisions of this article shall provide or cooperate in providing, at a minimum, the following when registering:

(1) The full name of the registrant, including any aliases, nicknames or other names used by the registrant;
(2) The address where the registrant intends to reside or resides at the time of registration, the name and address of the registrant’s employer or place of occupation at the time of registration, the names and addresses of any anticipated future employers or places of occupation, the name and address of any school or training facility the registrant is attending at the time of registration and the names and addresses of any schools or training facilities the registrant expects to attend;
(3) The registrant’s social security number;
(4) A full face photograph of the registrant at the time of registration;
(5) A brief description of the crime(s) for which the registrant was convicted; and
(6) Fingerprints.

(e) On the date that any person convicted or found not guilty by reason of mental illness, mental retardation or
addiction of any of the crimes listed herein, including those persons who are continuing under some post conviction supervisory status, are released, granted probation or a suspended sentence, released on parole, probation, home detention, work release, conditional release or any other release from confinement, the commissioner of corrections, regional jail administrator, city or sheriff operating a jail, or secretary of the department of health and human services which releases the person, and any parole or probation officer who releases the person or supervises the person following the release, shall obtain all information required by subsection (d) of this section prior to the release of the person, inform the person of his or her duty to register, and send written notice of the release of the person to the state police within three days of receiving the information. The notice shall include the information required by subsection (d) of this section.

(f) For any person determined to be a sexually violent predator, the notice required by subsection (d) of this section shall also include:

(1) Identifying factors, including physical characteristics;

(2) History of the offense; and

(3) Documentation of any treatment received for the mental abnormality or personality disorder.

(g) At the time the person is convicted or found not guilty by reason of mental illness, mental retardation or addiction in a court of this state of the crimes set forth in subsection (b) of this section, the person shall sign in open court, a statement acknowledging that he or she understands the requirements imposed by this article. The court shall inform the person so convicted of the requirements to register imposed by this article and shall further satisfy itself by interrogation of the defendant or his or her counsel that the defendant has received notice of
the provisions of this article and that the defendant understands
the provisions. The statement, when signed and witnessed, shall
constitute prima facie evidence that the person had knowledge
of the requirements of this article. Persons who have not signed
a statement under the provisions of this subsection and who are
subject to the registration requirements of this article shall be
informed of such requirement by the state police whenever the
state police obtain information that the person is subject to
registration requirements.

(h) The state police shall maintain a central registry of all
persons who register under this article and shall release
information only as provided in this article. The information
required to be made public by the state police by subdivision
(2), subsection (b), section five of this article shall be accessible
through the internet.

(i) For the purpose of this article, “sexually violent offense”
means:

(1) Sexual assault in the first degree as set forth in section
three, article eight-b, chapter sixty-one of this code, or of a
similar provision in another state, federal or military jurisdic-
tion;

(2) Sexual assault in the second degree as set forth in
section four, article eight-b, chapter sixty-one of this code, or of
a similar provision in another state, federal or military jurisdic-
tion;

(3) Sexual assault of a spouse as set forth in section six,
article eight-b, chapter sixty-one of this code, or of a similar
 provision in another state, federal or military jurisdiction;

(4) Sexual abuse in the first degree as set forth in section
seven, article eight-b, chapter sixty-one of this code, or of a
 similar provision in another state, federal or military jurisdic-
tion.
(j) For purposes of this article, the term “sexually motivated” means that one of the purposes for which a person committed the crime was for any person’s sexual gratification.

(k) For purposes of this article, the term “sexually violent predator” means a person who has been convicted or found not guilty by reason of mental illness, mental retardation or addiction of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

(l) For purposes of this article, the term “mental abnormality” means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons.

(m) For purposes of this article, the term “predatory act” means an act directed at a stranger or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.

§15-12-2a. Court determination of sexually violent predator.

(a) The circuit court that has sentenced a person for the commission of a sexually violent offense or that has entered a judgment of acquittal of a charge of committing a sexually violent offense in which the defendant has been found not guilty by reason of mental illness, mental retardation or addiction shall make a determination whether:

(1) A person is a sexually violent predator; or

(2) A person is no longer a sexually violent predator.

(b) A hearing to make a determination as provided for in subsection (a) of this section is a summary proceeding, triable before the court without a jury.
(c) A proceeding seeking to establish that a person is a sexually violent predator is initiated by the filing of a written pleading by the prosecuting attorney. The pleading shall describe the record of the judgment of the court on the person’s conviction or finding of not guilty by reason of mental illness, mental retardation or addiction of a sexually violent offense and shall set forth a short and plain statement of the prosecutor’s claim that the person suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

(d) A proceeding seeking to establish that a person is no longer a sexually violent predator is initiated by the filing of a petition by the person who has been determined to be a sexually violent predator.

(e) Prior to making a determination pursuant to the provisions of this section, the sentencing court may order a psychiatric or other clinical examination and, after examination, may further order a period of observation in an appropriate facility within this state designated by the court after consultation with the director of the division of health.

(f) Prior to making a determination pursuant to the provisions of this section, the sentencing court shall request and receive a report by the board established pursuant to section two-b of this article. The report shall set forth the findings and recommendation of the board on the issue of whether the person is a sexually violent predator.

(g) At a hearing to determine whether a person is a sexually violent predator, the person shall be present and shall have the right to be represented by counsel, introduce evidence and cross-examine witnesses. The offender shall have access to a summary of the medical evidence to be presented by the state. The offender shall have the right to an examination by an independent expert of his or her choice and testimony from the
expert as a medical witness on his or her behalf. At the termina-
tion of the hearing the court shall make a finding of fact upon
a preponderance of the evidence as to whether the person is a
sexually violent predator.

(h) If a person is determined by the circuit court to be a
sexually violent predator, the clerk of the court shall forward a
copy of the order to the state police in the manner promulgated
in accordance with the provisions of article three, chapter
twenty-nine-a of this code.

§15-12-3. Change in registry information.

When any person required to register under this article
changes his or her residence, address, place of employment or
occupation, or school or training facility which he or she is
attending, or when any of the other information required by this
article changes, he or she shall, within ten days, inform the
West Virginia state police of the changes in the manner
prescribed by the superintendent of state police in procedural
rules promulgated in accordance with the provisions of article
three, chapter twenty-nine-a of this code.

§15-12-4. Duration.

(a) A person required to register under the terms of this
article shall continue to comply with this section, except during
ensuing periods of incarceration or confinement, until:

(1) Ten years have elapsed since the person was released
from prison, jail or a mental health facility or ten years have
elapsed since the person was placed on probation, parole or
supervised or conditional release. The ten-year registration
period shall not be reduced by the sex offender’s release from
probation, parole or supervised or conditional release; or

(2) For the life of that person if that person: (A) Has one or
more prior convictions or has previously been found not guilty
by reason of mental illness, mental retardation or addiction for
any qualifying offense referred to in this article; or (B) has been
convicted or has been found not guilty by reason of mental
illness, mental retardation or addiction of a qualifying offense
as referred to in this article, and upon motion of the prosecuting
attorney, the court finds by clear and convincing evidence, that
the qualifying offense involved multiple victims or multiple
violations of the qualifying offense; or (C) has been convicted
or has been found not guilty by reason of mental illness, mental
retardation or addiction of a sexually violent offense; or (D) has
been determined pursuant to section two-a of this article to be
a sexually violent predator; or (E) has been convicted or has
been found not guilty by reason of mental illness, mental
retardation or addiction of a qualifying offense as referred to in
this article, involving a minor.

(b) A person whose conviction is overturned for the offense
which required them to register under this article shall, upon
petition to the court, have their name removed from the
registry.

§15-12-5. Distribution and disclosure of information; community
information programs by prosecuting attorney
and state police; petition to circuit court.

(a) Within five working days after receiving any notifica-
tion as described in this article, the state police shall distribute
a copy of the notification statement to:

(1) The supervisor of each county and municipal
law-enforcement office and any campus police department in
the city and county where the registrant resides, is employed or
attends school or a training facility;

(2) The county superintendent of schools where the
registrant resides, is employed or attends school or a training
facility;
(3) The child protective services office charged with investigating allegations of child abuse or neglect in the county where the registrant resides, is employed or attends school or a training facility;

(4) All community organizations or religious organizations which regularly provide services to youths in the county where the registrant resides, is employed or attends school or a training facility;

(5) Individuals and organizations which provide day care services for youths or day care, residential or respite care, or other supportive services for mentally or physically incapacitated or infirm persons in the county where the registrant resides, is employed or attends school or a training facility; and

(6) The federal bureau of investigation (FBI).

(b) Information concerning persons whose names are contained in the sexual offender registry and who are not required to register for life shall be disseminated only in the following manner and shall not be subject to the requirements of the West Virginia freedom of information act, as set forth in chapter twenty-nine-b of this code:

(1) When a person has been determined to be a sexually violent predator under the terms of section two-a of this article, the state police shall notify the prosecuting attorney of the county in which the person resides, is employed or attends a school or training facility. The prosecuting attorney shall cooperate with the state police in conducting a community notification program which shall include publication of the offender’s name, photograph, and place of residence, employment and education or training, as well as information concerning the legal rights and obligations of both the offender and the community. The prosecuting attorney and state police may conduct a community notification program in the county of
residence, employment or where a person is attending school or
a training facility of any person who is required to register for
life under the terms of subdivision (2), subsection (a), section
four of this article. Community notification may be repeated
when determined to be appropriate by the prosecuting attorney;

(2) The state police shall maintain and make available to
the public at least quarterly the list of all persons who are
required to register for life according to the terms of subdivi-
sion (2), subsection (a), section four of this article. The method
of publication and access to this list shall be determined by the
superintendent; and

(3) A resident of a county may petition the circuit court for
an order requiring the state police to release information about
persons residing in that county who are required to register
under section two of this article. The court shall determine
whether information contained on the list and relevant to public
safety outweighs the importance of confidentiality, and if the
court orders information to be released, it may further order
limitations upon secondary dissemination by the resident
seeking the information. In no event shall information concern-
ing the identity of a victim of an offense requiring registration
be released.

(c) The state police may furnish information and documen-
tation required in connection with the registration to authorized
law-enforcement, campus police and governmental agencies of
the United States and its territories, of foreign countries duly
authorized to receive the same, of other states within the United
States and of the state of West Virginia upon proper request
stating that the records will be used solely for law enforcement-
related purposes. The state police may disclose information
collected under this article to federal, state and local govern-
mental agencies responsible for conducting preemployment
checks.
(d) An elected public official, public employee or public agency is immune from civil liability for damages arising out of any action relating to the provisions of this section except when the official, employee or agency acted with gross negligence or in bad faith.

§15-12-8. Failure to register or provide notice of registration changes; penalty.

(a) Except as provided in this section, any person required to register under this article who knowingly provides false information or who refuses to provide accurate information when so required by terms of this article, or who knowingly fails to register or knowingly fails to provide a change in any information as required by this article, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than two hundred fifty dollars nor more than ten thousand dollars, or imprisoned in the county or regional jail not more than one year, or both: Provided, That each time the person has a change in any of the registration information as required by this article and fails to register the change or changes, each failure to register each separate item of information changed shall constitute a separate offense.

(b) Any person required to register under this article who is convicted of a second or subsequent offense of failing to register or provide a change in any information as required by this article, or any person who is required to register for life pursuant to subsection (2), subdivision (a), section four of this article and who fails to register or provide a change in information as required by this article is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than five years.

(c) Any person required to register as a sexual predator who fails to register or provide a change in information as required by this article is guilty of a felony and, upon conviction thereof,
shall, for a first offense, be confined in a state correctional
facility not less than two years nor more than ten years, and for
a second or subsequent offense, is guilty of a felony and shall
be confined in a state correctional facility not less than five
years nor more than twenty years.

(d) In addition to any other penalty specified for failure to
register under this article, any person under the supervision of
a probation officer, parole officer or any other sanction short of
confinement in jail or prison, who knowingly refuses to
register, or who knowingly fails to provide a change in informa-
tion as required by this article, shall be subject to immediate
revocation of probation or parole and returned to confinement
for the remainder of any suspended or unserved portion of his
or her original sentence.


(a) When any probation or parole officer accepts supervi-
sion of and has legal authority over any person required to
register under this article from another state under the terms and
conditions of the uniform act for out-of-state parolee supervi-
sion established under article six, chapter twenty-eight of this
code, the officer shall give the person written notice of the
registration requirements of this section and obtain a signed
statement from the person required to register acknowledging
the receipt of the notice. The officer shall obtain and submit to
the state police the information required in subsection (d),
section two of this article.

(b) Any person:

(1) Who resides in another state or federal or military
jurisdiction;

(2) Who is employed, carries on a vocation, is a student in
this state or is a visitor to this state for a period of more than
fifteen continuous days; and
(3) Who is required by the state, federal or military jurisdiction in which he or she resides to register in that state, federal or military jurisdiction as a sex offender, or has been convicted of a violation in that state, federal or military jurisdiction that is similar to a violation in this article requiring registration as a sex offender in this state, shall register in this state and otherwise comply with the provisions of this article.

(c) Any person changing residence to this state from another state or federal or military jurisdiction who is required to register as a sex offender under the laws of that state or federal or military jurisdiction shall register as a sex offender in this state.

CHAPTER 220

(S. B. 127 — By Senators Hunter, Mitchell and Kessler)

[Passed February 17, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one thousand three hundred one, article thirteen, chapter thirty-one-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to adding social workers to the list of professionals who may organize professional limited liability companies.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. PROFESSIONAL LIMITED LIABILITY COMPANIES.

As used in this article:

1. "Licensing board" means the governing body or agency established under chapter thirty of this code which is responsible for the licensing and regulation of the practice of the profession which the professional limited liability company is organized to provide;

2. "Professional limited liability company" means a limited liability company organized under this chapter for the purpose of rendering a professional service; and

3. "Professional service" means the services rendered by the following professions: Attorneys-at-law under article two, physicians and podiatrists under article three, dentists under article four, optometrists under article eight, accountants under article nine, veterinarians under article ten, architects under article twelve, engineers under article thirteen, osteopathic physicians and surgeons under article fourteen, chiropractors under article sixteen, psychologists under article twenty-one and social workers under article thirty, all of chapter thirty of this code.

CHAPTER 221

(Com. Sub. for S. B. 406 — By Senators Bowman, Bailey, Ball, Dawson, Kessler, McCabe, Minard, Redd, Snyder, Boley and Minear)

[Passed March 9, 2000; in effect July 1, 2000. Approved by the Governor.]

AN ACT to amend and reenact sections four and eleven, article six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the state building
commission; terminating certain powers; and transferring certain powers and responsibilities to the secretary of administration and to the West Virginia economic development authority.

Be it enacted by the Legislature of West Virginia:

That sections four and eleven, article six, 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 6. STATE BUILDINGS.

§5-6-4. Powers of commission.
§5-6-11. Management and control of project.

§5-6-4. Powers of commission.

1 The commission has the power:
2 (1) To sue and be sued, plead and be impleaded;
3 (2) To have a seal and alter the same at pleasure;
4 (3) To contract to acquire and to acquire, in the name of the commission or of the state, by purchase, lease, lease-purchase or otherwise, real property or rights or easements necessary or convenient for its corporate purposes and to exercise the power of eminent domain to accomplish those purposes;
5 (4) To acquire, hold and dispose of personal property for its corporate purposes;
6 (5) To make bylaws for the management and regulation of its affairs;
7 (6) With the consent of the attorney general of the state of West Virginia, to use the facilities of his or her office, assistants and employees in all legal matters relating to or pertaining to the commission;
8 (7) To appoint officers, agents and employees and fix their compensation;
(8) To make contracts, and to execute all instruments necessary or convenient to effectuate the intent of, and to exercise the powers granted to it by this article;

(9) To renegotiate all contracts entered into by it whenever, due to a change in situation, it appears to the commission that its interests will be best served;

(10) To construct a building or buildings on real property, which it may acquire, or which may be owned by the state of West Virginia, in the city of Charleston, as convenient as may be to the capitol building, together with incidental approaches, structures and facilities, subject to the consent and approval of the city of Charleston in any case as may be necessary; and, in addition, to acquire or construct a warehouse, including office space in the warehouse in Kanawha County for the West Virginia alcohol beverage control commissioner, and equip and furnish the office space: and to acquire or construct, through lease, purchase, lease-purchase or bond financing, hospitals or other facilities, buildings, or additions or renovations to buildings as may be necessary for the safety and care of patients, inmates and guests at facilities under the jurisdiction of and supervision of the division of health and at institutions under the jurisdiction of the division of corrections or the regional jail and correctional facilities authority; and to formulate and program plans for the orderly and timely capital improvement of all of the hospitals and institutions and the state capitol buildings; and to construct a building or buildings in Kanawha County to be used as a general headquarters by the division of public safety to accommodate that division's executive staff, clerical offices, technical services, supply facilities and dormitory accommodations; and to develop, improve and expand state parks and recreational facilities to be operated by the division of natural resources; and to establish one or more systems or complexes of buildings and projects under control of the commission; and, subject to prior agree-
ments with holders of bonds previously issued, to change the
systems, complexes of buildings and projects from time to time,
in order to facilitate the issuance and sale of bonds of different
series on a parity with each other or having such priorities
between series as the commission may determine; and to
acquire by purchase, eminent domain or otherwise all real
property or interests in the real property necessary or conve-
nient to accomplish the purposes of this subdivision. The rights
and powers set forth in this subdivision shall not be construed
as in derogation of any rights and powers now vested in the
West Virginia alcohol beverage control commissioner, the
department of health and human resources, the division of
corrections or the division of natural resources;

(11) To maintain, construct and operate a project authorized
under this article;

(12) To charge rentals for the use of all or any part of a
project or buildings at any time financed, constructed, acquired
or improved, in whole or in part, with the proceeds of sale of
bonds issued pursuant to this article, subject to and in accord-
dance with such agreements with bondholders as may be made
as provided in this article: Provided, That on and after the
effective date of the amendments to this section, to charge
rentals for the use of all or any part of a project or buildings at
any time financed, constructed, acquired, maintained or
improved, in whole or in part, with the proceeds of sale of
bonds issued pursuant to this article, subject to and in accor-
dance with such agreements with bondholders as may be made
as in this section provided, or with any funds available to the
state building commission, including, but not limited to, all
buildings and property owned by the state of West Virginia or
by the state building commission, but no rentals shall be
charged to the governor, attorney general, secretary of state,
state auditor, state treasurer, the Legislature and the members
of the Legislature, the supreme court of appeals, nor for their
offices, agencies, official functions and duties;

(13) To issue negotiable bonds and to provide for the rights
of the holders of the negotiable bonds;

(14) To accept and expend any gift, grant or contribution of
money to, or for the benefit of, the commission, from the state
of West Virginia or any other source for any or all of the
purposes specified in this article or for any one or more of such
purposes as may be specified in connection with the gift, grant
or contribution;

(15) To enter on any lands and premises for the purpose of
making surveys, soundings and examinations;

(16) To invest in United States government obligations, on
a short-term basis, any surplus funds which the commission
may have on hand pending the completion of any project or
projects;

(17) To issue revenue bonds in accordance with the
applicable provisions of this article for the purposes set forth in
section eleven-a of this article; and

(18) To do all things necessary or convenient to carry out
the powers given in this article.

(19) The power and authority granted to the state building
commission pursuant to this section and sections seven, eight
and eleven-a of this article to initiate, acquire, construct,
finance or develop projects; to issue revenue bonds; or to
exercise the power of eminent domain with respect to any
project, shall terminate on the effective date of this section:
Provided, That nothing herein shall be construed to affect the
validity of any act of the state building commission prior to the
effective date of this section or to impair the rights of bondhold-
ers with respect to bonds or other evidence of indebtedness
issued prior to the effective date of this section. Following the
effective date of this section, the secretary of administration
may exercise any power expressly granted pursuant to this
article with respect to any project or facility previously con-
structed or acquired, any existing contractual obligations, and
any outstanding bonded indebtedness. Refunding bonds for any
outstanding bonded indebtedness are authorized, subject to the
provisions of article two-e, chapter thirteen of this code. The
West Virginia economic development authority provided for in
article fifteen, chapter thirty-one of this code is designated to
act as the governing body whose authorizations and determina-
tions are required for the purpose of refunding bonds.

§5-6-11. Management and control of project.

The secretary of administration shall properly maintain,
repair, operate, manage and control the project, fix the rates of
rental, and establish bylaws and rules and regulations for the
use and operation of the project, and may make and enter into
all contracts or agreements necessary and incidental to the
performance of its duties and the execution of its powers under
this article.

CHAPTER 222

(S. B. 454 — Originating in the Committee on Finance)

[Passed March 9, 2000; in effect from passage. Approved by the Governor.]
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 eleven-c, to read as follows:

ARTICLE 6. STATE BUILDING COMMISSION.

§5-6-11c. Power of the state building commission to transfer project funds to other projects for state capitol improvements and renovations.

(a) The state building commission shall transfer unexpended funds allocated to the capitol complex bus access facility project certified under subsection (f), section eleven-a of this article to other projects for state capitol improvements and renovations.

(b) The provisions of subsection (f), section eleven-a of this article requiring public hearing do not apply to transfers of funds under subsection (a) of this section.

CHAPTER 223

(H. B. 4060 — By Delegates Douglas, Varner, Kuhn, Perdue, Angotti, Stalnaker and Willison)

[Passed February 15, 2000; in effect ninety days from passage. Approved by the Governor.]
section eighteen, article three, chapter thirty of said code; to amend and reenact section three, article thirteen-a of said chapter; and to amend and reenact section three, article thirty of said chapter, all relating to establishing a sunset review process for regulatory boards.

Be it enacted by the Legislature of West Virginia:

That section three, article ten, chapter four 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 five-b; that section eighteen, article three, chapter thirty of said code be amended and reenacted; that section three, article thirteen-a of said chapter be amended and reenacted; and that section three, article thirty of said chapter be amended and reenacted, all to read as follows:

Chapter
4. The Legislature.
30. Professions and Occupations.

CHAPTER 4. THE LEGISLATURE.

ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.

§4-10-3. Definitions.
§4-10-5b. Termination of boards created to regulate professions and occupations.

§4-10-3. Definitions.

As used in this article, unless the context clearly indicates a different meaning:

(1) "Agency" means any bureau, department, division, commission, agency, committee, office, board, authority, subdivision, program, council, advisory body, cabinet, panel, system, task force, fund, compact, institution, survey, position, coalition or other entity, however designated, in the state of West Virginia.
(2) "Committee" means the joint committee on government operations, hereinafter continued, to perform duties under this article.

(3) "Full performance evaluation" means to determine for an agency whether or not the agency is operating in an efficient and effective manner and to determine whether or not there is a demonstrable need for the continuation of the agency, pursuant to the provisions of section ten of this article. References in this code to performance audit or full performance audit shall be taken as and shall mean full performance evaluation.

(4) "Preliminary performance review" means to determine for an agency whether or not the agency is performing in an efficient and effective manner and to determine whether or not there is a demonstrable need for the continuation of the agency pursuant to the provisions of section eleven of this article.

(5) "Compliance monitoring and further inquiry update" means to determine for an agency whether or not the agency has complied with recommendations contained in a completed full performance evaluation or a completed preliminary performance review conducted pursuant to this article and that further inquiry into the operation of the agency may be conducted pursuant to the provisions of sections ten-a and eleven-a of this article.

(6) "Regulatory board evaluation" means to determine for a board whether or not the board is necessary for the protection of public health and safety and whether or not the board is operating in compliance with the policies and provisions of chapter thirty of this code and other applicable laws and rules. A regulatory board evaluation may be based on reported data which is not independently verified.
§4-10-5b. Termination of boards created to regulate professions and occupations.

(a) The legislative auditor shall evaluate each board created under chapter thirty of this code to regulate professions and occupations, at least once every twelve years. The evaluation shall assess whether the board complies with the policies and provisions of chapter thirty of this code and other applicable laws and rules, whether the board follows a disciplinary procedure which observes due process rights and protects the public interest, and whether the public interest requires that the board be continued.

(b) The following boards shall be terminated on the date indicated, but no board may be terminated under this section unless a regulatory board evaluation has been conducted upon the board:

(1) On the first day of July, two thousand one: Board of accountancy; board of architects; massage therapy licensure board; board of licensed dieticians; board of medicine.

(2) On the first day of July, two thousand two: Board for respiratory care; board of examiners for speech language pathology and audiology; board of examiners for registered practical nurses; board of examiners for licensed practical nurses.

(3) On the first day of July, two thousand three: Board of pharmacy; board of dental examiners; board of osteopathy.

(4) On the first day of July, two thousand four: Board of examiners of land surveyors; board of landscape architects; board of registration for foresters.

(5) On the first day of July, two thousand five: Board of social work examiners; board of veterinary medicine; acupuncture board.
(6) On the first day of July, two thousand six: Board of examiners in counseling; board of examiners of psychologists.

(7) On the first day of July, two thousand seven: Board of registration for sanitarians; board of embalmers and funeral directors; board of optometry.

(8) On the first day of July, two thousand eight: Nursing home administrators board; board of hearing aid dealers; board of barbers and cosmetologists.

(9) On the first day of July, two thousand nine: Board of physical therapy; board of chiropractic examiners; board of occupational therapy.

(10) On the first day of July, two thousand ten: Professional firefighters board; board of registration for professional engineers; radiologic technology board of examiners.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.


13A. Land Surveyors.

30. Social Workers.

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

*§30-3-18. Continuation of board.

The board of medicine shall continue to exist until the first day of July, two thousand, pursuant to the provisions of article ten, chapter four of this code, to allow for the completion of a regulatory board evaluation by the joint committee on government operations.

ARTICLE 13A. LAND SURVEYORS.

§30-13A-3. Board of examiners of land surveyors created; appointment, terms, removal, etc., of members; officers; meetings; quorum; compensation and expenses.

*Clerk’s Note: This section was also amended by S. B. 450 (Chapter 243), which passed subsequent to this act.
(a) There is hereby created the state board of examiners of land surveyors which shall be composed of three members appointed by the governor by and with the advice and consent of the Senate. Each member shall have been actively engaged in the practice of land surveying for at least ten years and shall be the holder of a license under the provisions of this article.

(b) The members of the board shall be appointed for overlapping terms of three years each ending on the thirtieth day of June, and until their respective successors have been appointed and qualified. Members may be reappointed for any number of terms. Before entering upon the performance of his duties, each member shall take and subscribe to the oath required by section five, article IV of the constitution of this state. Vacancies shall be filled by appointment by the governor for the unexpired term of the member whose office shall be vacant and such appointment shall be made within sixty days of the occurrence of such vacancy. Any member may be removed by the governor in case of incompetency, neglect of duty, gross immorality or malfeasance in office.

(c) The board shall elect from its membership a chairman and secretary-treasurer. A majority of the members of the board shall constitute a quorum and meetings shall be held at the call of the chairman or upon the written request of two members at such time and place as designated in such call or request, and, in any event, the board shall meet at least once annually to conduct the examination hereinafter provided for and to transact such other business as may come before it.

(d) Members shall be paid such reasonable compensation as the board may from time to time determine, and in addition may be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties, which compensation and expenses shall be paid in accordance with the provisions of subsection (b), section four of this article.
(e) After having conducted a regulatory board evaluation through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the board of examiners of land surveyors should be continued and reestablished. Accordingly, notwithstanding the provisions of section four of said article, the board of examiners of land surveyors shall continue to exist until the first day of July, two thousand four.

ARTICLE 30. SOCIAL WORKERS.

§30-30-3. Board of social work examiners.

(a) For the purpose of carrying out the provisions of this article, there is hereby created a West Virginia board of social work examiners, consisting of seven members who shall be appointed by the governor, subject to the following requirements:

1. No person may be excluded from serving on the board by reason of race, sex or national origin;

2. One member shall be an independent clinical social worker, two members shall be certified social workers, one member shall be a graduate social worker and two members shall be social workers. All such members must be licensed under the provisions of this article in accordance with their respective titles. In addition, there shall be one member of the board chosen from the general public: Provided, That those members who are appointed by the governor to serve as the first board after the effective date of this article shall be persons eligible for the licensing required under this article: Provided, however, That the member from the general public shall never be required to be eligible for licensing;

3. The members of the first board to serve after the effective date of this article shall be appointed within ninety days thereof;
(4) The term of office for each member of the board shall be three years: Provided, That one of the members of the first board to serve after the effective date of this article shall serve a term of two years, three of them shall serve a term of three years and the remaining three shall serve a term of four years; and

(5) The governor shall, whenever there is a vacancy on the board due to circumstances other than the expiration of the term of a member, appoint another member with the same qualifications as the member who has vacated to serve the duration of the unexpired term.

For the purpose of accepting nominations for the replacement of a member, the governor shall cause a notice of the vacancy to be published at least thirty days prior to an announcement of the replacement member, as a Class I-0 legal advertisement, in accordance with the provisions of section two, article three, chapter fifty-nine of this code. The publication area shall be statewide.

If the governor fails to make appointment in ninety days after expiration of any term, the board shall make the necessary appointment. Each member shall hold office until the expiration of the term for which such member is appointed and until a successor shall have been duly appointed and qualified.

(b) Any members of the board may be removed from office for cause, in accordance with procedures set forth in this code for the removal of public officials from office.

(c) The board shall pay each member the same compensation as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties and shall reimburse each member for actual and necessary expenses
incurred in the discharge of official duties: Provided, That such compensation and such expenses shall not exceed the amount received by the board from licensing fees and penalties imposed under subdivision (4), subsection (e) of this section.

(d) The board shall hold an annual election for the purpose of electing a chairman, vice chairman and secretary. The requirements for meetings and management of the board shall be established in regulations promulgated by the board as required by this article.

(e) In addition to the duties set forth in other provisions of this article, the board shall:

(1) Recommend to the Legislature any proposed modifications to this article;

(2) Report to county prosecutors any suspected violations of this article: Provided, That no report shall be made until the board has given the suspected violator ninety days written notice of the suspected violation and the violator has, within such ninety-day period, been afforded an opportunity to respond to the board with respect to the allegation;

(3) Publish an annual report and a roster listing the names and addresses of all persons who have been licensed in accordance with the provisions of this article as an independent clinical social worker, certified social worker, graduate social worker or social worker;

(4) Establish a fee schedule by legislative rule, pursuant to the provisions of chapter twenty-nine-a of this code, which schedule may include fees for the initial examination, license fee, license renewal, license replacement, reciprocal license, license classification change, continuing education provider approval and monitoring, mailing lists and requests for information and reports; fees for requests for information and reports shall not be greater than the cost of personnel, time and supplies
(5) Establish standards and requirements by legislative rule, pursuant to the provisions of chapter twenty-nine-a of this code, for continuing education. In establishing these requirements the board shall consult with professional groups and organizations representing all levels of practice provided for in this article and the board shall consider recognized staff development programs, continuing education programs offered by colleges and universities having social work programs approved or accredited by the council on social work education, and continuing education programs offered by recognized state and national social work bodies: Provided, That such standards and requirements for continuing education shall not be construed to alter or affect in any way the standards and requirements for licensing as set forth elsewhere in this article;

(6) Establish standards and requirements for the practice of social work and the differentiation of qualifications, education, training, experience, supervision, responsibilities, rights, duties and privileges at the independent clinical social worker, certified social worker, graduate social worker and social worker license levels. In establishing these standards and requirements the board shall consult with professional groups and organizations representing all levels of practice provided for in this article. Standards and requirements may include, but are not limited to, practice standards, practice parameters, quality indicators, minimal standards of acceptance, advanced training and certification and continuing education: Provided, That such standards and requirements for practice may not be construed to alter or affect in any way the standards and requirements for licensing as set forth elsewhere in this article;

(7) Conduct its proceedings in accordance with provisions of article nine-a, chapter six of this code; and
120 (8) Employ, direct and define the duties of administrative
121 clerical support staff.
122
123 (f) After having conducted a regulatory board evaluation
124 through its joint committee on government operations, pursuant
125 to article ten, chapter four of this code, the Legislature hereby
126 finds and declares that the board of social work examiners be
127 continued and reestablished. Accordingly, notwithstanding the
128 provisions of said article, the board of social work examiners
129 shall continue to exist until the first day of July, two thousand
130 five.

CHAPTER 224

(H. B. 4793 — By Delegates Douglas, Varner, Butcher, Caputo,
Prunty, Willison and Stalnaker)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four, four-a, five and five-a,
article ten, chapter four of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, changing agency
termination dates pursuant to the West Virginia sunset law.

Be it enacted by the Legislature of West Virginia:

That sections four, four-a, five and five-a, article ten, 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 10. THE WEST VIRGINIA SUNSET LAW.

§4-10-4. Termination of agencies following full performance evaluations.
§4-10-4a. Termination of agencies previously subject to full performance evalua-
tions following compliance monitoring and further inquiry updates.
§4-10-5. Termination of agencies following preliminary performance reviews.
§4-10-5a. Termination of agencies previously subject to preliminary performance reviews following compliance monitoring and further inquiry updates.

§4-10-4. Termination of agencies following full performance evaluations.

The following agencies shall be terminated on the date indicated, but no agency may be terminated under this section unless a full performance evaluation has been conducted upon such agency:

(1) On the first day of July, two thousand one: Purchasing division within the department of administration; division of motor vehicles; division of environmental protection; department of health and human resources; and department of tax and revenue.

(2) On the first day of July, two thousand two: Division of highways; division of labor; division of natural resources; and division of corrections.

(3) On the first day of July, two thousand three: Division of culture and history; and school building authority.

(4) On the first day of July, two thousand four: Division of personnel; division of rehabilitation services; and workers’ compensation.

(5) On the first day of July, two thousand five: Parkways, economic development and tourism authority; tourism functions within the development office.

§4-10-4a. Termination of agencies previously subject to full performance evaluations following compliance monitoring and further inquiry updates.

The following agencies shall be terminated on the date indicated, but no agency may be terminated under this section unless a compliance monitoring and further inquiry update has
been completed on the agency subsequent to the prior comple-
tion of a full performance evaluation:

On the first day of July, two thousand one: Office of judges in workers’ compensation.

§4-10-5. Termination of agencies following preliminary perfor-
mance reviews.

The following agencies shall be terminated on the date indicated, but no agency may be terminated under this section unless a preliminary performance review has been conducted upon such agency:

(1) On the first day of July, one thousand nine hundred ninety-six: Juvenile facilities review panel.

(2) On the first day of July, one thousand nine hundred ninety-seven: Public employees insurance agency advisory board; cable television advisory board.

(3) On the first day of July, one thousand nine hundred ninety-nine: Tree fruit industry self improvement assessment program.

(4) On the first day of July, two thousand: Terms of family law master and family law master system; motorcycle safety and education committee.

(5) On the first day of July, two thousand one: Real estate commission; public employees insurance agency; public employees insurance agency finance board; rural health advisory panel; oil and gas conservation commission; state fire commission; state police; and motor vehicle dealers advisory board.

(6) On the first day of July, two thousand two: Whitewater commission within the division of natural resources; state geological and economic survey; unemployment compensation;
West Virginia contractor licensing board; women’s commission; ethics commission; veterans’ council; educational broadcasting authority; division of protective services; office of explosives and blasting; office of coalfield community development; motorcycle safety standards and education committee; and state rail authority.

(7) On the first day of July, two thousand three: Driver’s licensing advisory board; West Virginia commission for national and community service; West Virginia’s membership in the southern regional education board; marketing and development division of the department of agriculture; manufactured housing construction and safety board; and environmental quality board.

(8) On the first day of July, two thousand four: Meat inspection program of the department of agriculture; state board of risk and insurance management; interstate commission on uniform state laws; design-build board; center for professional development and interstate commission on the Potomac River basin.

(9) On the first day of July, two thousand five: Board of banking and financial institutions; lending and credit rate board; governor’s cabinet on children and families; health care authority; and emergency medical services advisory council.

(10) On the first day of July, two thousand six: Family protection services board; medical services fund advisory council; West Virginia stream partners program; Ohio River valley water sanitation commission; and soil conservation committee.

§4-10-5a. Termination of agencies previously subject to preliminary performance reviews following compliance monitoring and further inquiry updates.
The following agencies shall be terminated on the date indicated, but no agency may be terminated under this section unless a compliance monitoring and further inquiry update has been completed on the agency subsequent to the prior completion of a preliminary performance review:

(1) On the first day of July, two thousand: State building commission.

(2) On the first day of July, two thousand one: State lottery commission; public service commission; oil and gas inspector's examining board; office of water resources of the division of environmental protection; and human rights commission.

(3) On the first day of July, two thousand two: Capitol building commission; racing commission; bureau for child support enforcement; parks section and parks functions of the division of natural resources; public defender services and investment management board.

(4) On the first day of July, two thousand three: Commission for the deaf and hard-of-hearing.

(5) On the first day of July, two thousand four: Office of the environmental advocate.

CHAPTER 225

(S. B. 226 — By Senators Bowman, Bailey, Dawson, Kessler, McCabe, Minard, Redd, Walker, Wooton, Boley and Minear)

[Passed March 6, 2000; in effect ninety days from passage. Approved by the Governor.]
hundred thirty-one, as amended, relating to continuing the 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 code, the West Virginia commission for the deaf and hard-of-hearing shall continue to exist until the first day of July, two thousand three, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.

CHAPTER 226

(S. B. 398 — By Senators Bowman, Ball, Dawson, Kessler, McCabe, Minard, Plymale, Redd, Walker, Wooton, Boley and Minear)

[Passed March 6, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one-a, article two, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the department of health and human resources.

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

ARTICLE 2. DEPARTMENT OF HEALTH AND HUMAN RESOURCES, AND OFFICE OF COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.

§9-2-1a. Department of welfare renamed division of human services; continuation of the department of health and human resources and the division of human services.

The state department of welfare, created pursuant to the provisions of chapter nine of this code, is hereby continued as an official department of the state of West Virginia, but effective the twenty-ninth day of May, one thousand nine hundred eighty-three, its name shall be the division of human services. All references in the code to the department of welfare shall mean the division of human services and all references to the commissioner of the division of human services and for all other legal purposes the department of welfare shall continue as the division of human services.

The department of health and human resources and the division of human services within that department shall be charged with the administration of this chapter. The department of health and human resources shall continue to exist and the division of human services shall continue to exist within the department of health and human resources until the first day of July, two thousand one, to permit a review of their functions to be undertaken by the joint committee on government operations as part of the full performance evaluation of the department of health and human resources scheduled to continue during the interim of the Legislature in the year two thousand.
CHAPTER 227

(H.B. 4156 — By Delegates Douglas, Butcher, Caputo, Prunty, Willison, Verner and Mattaliano)

[Passed February 22, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article four, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the medical services advisory council.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. STATE ADVISORY BOARD; MEDICAL SERVICES FUND; ADVISORY COUNCIL; GENERAL RELIEF FUND.

§9-4-3. Advisory council.

The advisory council, created by chapter one hundred forty-three, acts of the Legislature, regular session, one thousand nine hundred fifty-three, as an advisory body to the state medicaid agency with respect to the medical services fund and disbursements therefrom and to advise about health and medical services, is continued so long as the medical services fund remains in existence, and thereafter so long as the state medicaid agency considers the advisory council to be necessary or desirable, and it is organized as provided by this section and applicable federal law and has those advisory powers and duties as are granted and imposed by this section and elsewhere by law: Provided, That the continuation of the advisory council is subject to a preliminary performance review pursuant to the
provisions of article ten, chapter four of this code, evaluating
the effectiveness and efficiency of the advisory council, to be
conducted during the interim of the Legislature in the year two
thousand six by the joint committee on government operations.

The term of office of those members serving on the
advisory council, on the effective date of the amendments made
to this section by the Legislature during its regular session in
the year one thousand nine hundred ninety-eight, shall continue
until they are reappointed or replaced in accordance with the
provisions of this section.

The advisory council shall consist of not less than nine
members, nor more than thirteen members, all but two of whom
shall be appointed by the state medicaid agency and serve until
replaced or reappointed on a rotating basis. The heads of the
public health and public welfare agencies are members ex
officio. The remaining members comprising the council consist
of a person of recognized ability in the field of medicine and
surgery with respect to whose appointment the state medical
association shall be afforded the opportunity of making
nomination of three qualified persons, one member shall be a
person of recognized ability in the field of dentistry with
respect to whose appointment the state dental association shall
be afforded the opportunity of nominating three qualified
persons, and the remaining members shall be chosen from
persons of recognized ability in the fields of hospital adminis-
tration, nursing and allied professions and from consumers
groups, including medicaid recipients, members of the West
Virginia directors of senior and community services, labor
unions, cooperatives and consumer-sponsored prepaid group
practices plans.

The council shall meet on call of the state medicaid agency.

Each member of the advisory council shall receive reim-
bursement for reasonable and necessary travel expenses for
each day actually served in attendance at meetings of the
council in accordance with the state’s travel regulations. Requisitions for the expenses shall be accompanied by an itemized statement, which shall be filed with the auditor and preserved as a public record.

The advisory council shall assist the state medicaid agency in the establishment of rules, standards and bylaws necessary to carry out the provisions of this section and shall serve as consultants to the state medicaid agency in carrying out the provisions of this section.

CHAPTER 228

(H. B. 4296 — By Delegates Douglas, Butcher, Caputco, Prunty, Willison, Varner and Stalnaker)

[Passed March 7, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the West Virginia investment management board.

Be it enacted by the Legislature of West Virginia:

That section twenty, 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.

§12-6-20. Termination of board.

Pursuant to the provisions of article ten, chapter four of this code, the West Virginia investment management board shall continue to exist until the first day of July, two thousand two.
AN ACT to amend and reenact section two, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section fifty, relating to continuing the West Virginia state police.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-2. Superintendent; departmental headquarters; continuation of the state police.

§15-2-50. Termination date.

§15-2-2. Superintendent; departmental headquarters; continuation of the state police.

1 The department of public safety, heretofore established, shall be continued and hereafter shall be known as the West Virginia state police. Wherever the words “department of public safety” or “division of public safety” appear in this code, they shall mean the West Virginia state police. The governor shall nominate, and by and with the advice and consent of the Senate, appoint a superintendent to be the executive and
administrative head of the department. Notwithstanding any provision of this code to the contrary, the superintendent shall be paid an annual salary of sixty thousand dollars. The superintendent shall hold the rank of colonel and is entitled to all rights, benefits and privileges of regularly enlisted members. On the date of his or her appointment, the superintendent shall be at least thirty years of age. Before entering upon the discharge of the duties of his or her office, he or she shall execute a bond in the penalty of ten thousand dollars, payable to the state of West Virginia and conditioned upon the faithful performance of his or her duties. Such bond both as to form and security shall be approved as to form by the attorney general, and to sufficiency by the governor.

Before entering upon the duties of his or her office the superintendent shall subscribe to the oath hereinafter provided. The headquarters of the department shall be located in Kanawha County.

§15-2-50. Termination date.

Pursuant to the provisions of article ten, chapter four of this code, the West Virginia state police shall continue to exist until the first day of July, two thousand one, unless sooner terminated, continued or reestablished by act of the Legislature.

CHAPTER 230

(S. B. 166 — By Senators Bowman, Bailey, Ball, Dawson, Kessler, McCabe, Minard, Redd, Wooton, Boley and Minear)

[Passed February 7, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article twenty-one-a, chapter nineteen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to continuing the state
soil conservation committee.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21A. SOIL CONSERVATION DISTRICTS.

§19-21A-4. State soil conservation committee; continuation.

(a) The state soil conservation committee is continued. It is
to serve as an agency of the state and to perform the functions
conferred upon it in this article. The committee shall consist of
seven members. The following shall serve, ex officio, as
members of the committee: The director of the state cooperative
extension service; the director of the state agricultural experi-
ment station; the director of the division of environmental
protection; and the state commissioner of agriculture, who shall
be chairman of the committee.

The governor shall appoint as additional members of the
committee three representative citizens. The term of members
thus appointed shall be four years, except that of the first
members so appointed, one shall be appointed for a term of two
years, one for a term of three years and one for a term of four
years. In the event of a vacancy, appointment shall be for the
unexpired term.

The committee may invite the secretary of agriculture of the
United States of America to appoint one person to serve with
the committee as an advisory member.

The committee shall keep a record of its official actions,
shall adopt a seal, which seal shall be judicially noticed, and
may perform such acts, hold such public hearings and promul-
gate such rules as may be necessary for the execution of its
functions under this article.
(b) The state soil conservation committee may employ an administrative officer and such technical experts and such other agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. The committee may call upon the attorney general of the state for such legal services as it may require. It shall have authority to delegate to its chairman, to one or more of its members, or to one or more agents or employees, such powers and duties as it may deem proper. The committee is empowered to secure necessary and suitable office accommodations and the necessary supplies and equipment. Upon request of the committee, for the purpose of carrying out any of its functions, the supervising officer of any state agency or of any state institution of learning shall, insofar as may be possible, under available appropriations, and having due regard to the needs of the agency to which the request is directed, assign or detail to the committee, members of the staff or personnel of such agency or institution of learning and make such special reports, surveys or studies as the committee may request.

(c) A member of the committee shall hold office so long as he or she shall retain the office by virtue of which he or she shall be serving on the committee. A majority of the committee shall constitute a quorum and the concurrence of a majority in any matter within their duties shall be required for its determination. The chairman and members of the committee shall receive no compensation for their services on the committee but shall be entitled to expenses, including traveling expenses necessarily incurred in the discharge of their duties on the committee. The committee shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate public record of all proceedings and of all resolutions, rules and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements.
(d) In addition to the duties and powers hereinafter conferred upon the state soil conservation committee, it shall have the following duties and powers:

(1) To offer such assistance as may be appropriate to the supervisors of soil conservation districts, organized as provided hereinafter, in the carrying out of any of their powers and programs.

(2) To keep the supervisors of each of the several districts, organized under the provisions of this article, informed of the activities and experience of all other districts organized hereunder, and to facilitate an interchange of advice and experience between such districts and cooperation between them;

(3) To coordinate the programs of the several soil conservation districts organized hereunder so far as this may be done by advice and consultation;

(4) To secure the cooperation and assistance of the United States and any of its agencies and of agencies of this state in the work of such districts;

(5) To disseminate information throughout the state concerning the activities and programs of the soil conservation districts organized hereunder and to encourage the formation of such districts in areas where their organization is desirable;

(6) To accept and receive donations, gifts, contributions, grants and appropriations in money, services, materials or otherwise, from the United States or any of its agencies, from the state of West Virginia or from other sources, and to use or expend such money, services, materials or other contributions in carrying out the policy and provisions of this article, including the right to allocate such money, services or materials in part to the various soil conservation districts created by this article in order to assist them in carrying on their operations; and
(7) To obtain options upon and to acquire by purchase, exchange, lease, gift, grant, bequest, devise or otherwise, any property, real or personal, or rights or interests therein; to maintain, administer, operate and improve any properties acquired; to receive and retain income from such property and to expend such income as required for operation, maintenance, administration or improvement of such properties or in otherwise carrying out the purposes and provisions of this article; and to sell, lease or otherwise dispose of any of its property or interests therein in furtherance of the purposes and the provisions of this article. Money received from the sale of land acquired in the small watershed program shall be deposited in the special account of the state soil conservation committee and expended as herein provided.

After having conducted a performance audit through its joint committee on government operations, pursuant to article ten, chapter four of this code, the Legislature hereby finds and declares that the state soil conservation committee should be continued and reestablished. Accordingly, pursuant to the provisions of section five of said article, the state soil conservation committee shall continue to exist until the first day of July, two thousand six, unless sooner terminated, continued or reestablished by act of the Legislature.

CHAPTER 231

(H. B. 4771 — By Delegates Douglas, Butcher, Caputo, Prunty, Perdue, Stalnaker and Willison)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]
hundred thirty-one, as amended, relating to continuing the racing commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. HORSE AND DOG RACING.

§19-23-30. Termination of the racing commission.

Pursuant to the provisions of article ten, chapter four of this code, the racing commission shall continue to exist until the first day of July, two thousand two, unless sooner terminated, continued or reestablished by act of the Legislature.

CHAPTER 232

(H. B. 4297 — By Delegates Douglas, Butcher, Caputo, Prunty, Willison, Manchin and H. White)

[Passed March 7, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article thirteen, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the West Virginia stream partners program.

Be it enacted by the Legislature of West Virginia:

That section three, article thirteen, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 13. WEST VIRGINIA STREAM PARTNERS PROGRAM.

§20-13-3. West Virginia stream partners program created; executive committee identified; program coordination.

There is hereby created the West Virginia stream partners program and within the division of natural resources there is hereby created the West Virginia stream partners program fund. Subject to annual appropriation of the Legislature into the West Virginia stream partners program fund, the program shall be jointly administered by the division of natural resources, the division of environmental protection, the division of forestry and the West Virginia state soil conservation agency. The director or commissioner of each of these administering agencies or his or her designee shall collectively constitute an executive committee to oversee the program. The governor shall designate a member of the executive committee to serve as chair. The committee may designate a staff member from the existing staff of one of the administering agencies to coordinate the program on behalf of the executive committee. Pursuant to the provisions of article ten, chapter four of this code, the stream partners program and stream partners program fund shall continue to exist until the first day of July, two thousand six, unless sooner terminated, continued or reestablished by act of the Legislature.

CHAPTER 233

(H. B. 4772 — By Delegates Douglas, Butcher, Caputo, Prunty, Manchin, Louisos and Willison)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]
hundred thirty-one, as amended, relating to continuing the division of environmental protection.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DIVISION OF ENVIRONMENTAL PROTECTION.

§22-1-4. Division of environmental protection continued.

Pursuant to the provisions of article ten, chapter four of this code, the division of environmental protection shall continue to exist until the first day of July, two thousand one, unless sooner terminated, continued or reestablished by act of the Legislature.

CHAPTER 234

(S. B. 164 — By Senators Bowman, Bailey, Ball, Dawson, Kessler, McCabe, Minard, Redd, Wooton, Boley and Minear)

[Passed February 7, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article twenty, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the environmental advocate.

Be it enacted by the Legislature of West Virginia:

That section one, article twenty, 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 20. ENVIRONMENTAL ADVOCATE.

§22-20-1. Appointment of environmental advocate; powers and duties; salary; continuation of position.

The director of the division of environmental protection shall appoint a person to serve as the environmental advocate within the division of environmental protection, and shall adopt and promulgate rules in accordance with the provisions of article three, chapter twenty-nine-a of this code governing and controlling the qualifications, powers and duties of the person to be appointed to the position of environmental advocate. The environmental advocate shall serve at the will and pleasure of the director, who shall also set the salary of the environmental advocate. All funding for the office of environmental advocate shall be from existing funds of the division of environmental protection. The director shall provide an office and secretarial and support staff as needed. The position of environmental advocate shall continue to exist until the first day of July, two thousand four, pursuant to article ten, chapter four of this code, unless sooner terminated, continued or reestablished by act of the Legislature.

CHAPTER 235

(S. B. 227 — By Senators Bowman, Bailey, Dawson, Kessler, McCabe, Minard, Redd, Walker, Wooton, Boley and Minear)

[Passed March 1, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article three, chapter twenty-two-b of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to continuing the environmental quality board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ENVIRONMENTAL QUALITY BOARD.

§22B-3-5. Environmental quality board continued.

Pursuant to the provisions of article ten, chapter four of this code, and following a preliminary performance review by the joint committee on government operations, the environmental quality board shall continue to exist until the first day of July, two thousand three, unless sooner terminated, continued or reestablished by act of the Legislature.
That section three, article seven, chapter twenty-two-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article further be amended by adding thereto a new section, designated section four, all to read as follows:

ARTICLE 7. OIL AND GAS INSPECTORS' EXAMINING BOARD.

§22C-7-3. Oil and gas inspectors' examining board created; composition; appointment, term and compensation of members; meetings; powers and duties generally.

§22C-7-4. Termination date.

§22C-7-3. Oil and gas inspectors' examining board created; composition; appointment, term and compensation of members; meetings; powers and duties generally.

(a) There is hereby continued an oil and gas inspectors' examining board consisting of five members, two of whom shall be ex officio members and three of whom shall be appointed by the governor, by and with the advice and consent of the Senate. Appointed members may be removed only for the same causes and like manner as elective state officers. One member of the board shall be the representative of the public at large and shall be a person who is knowledgeable about the subject matter of this article and has no direct or indirect financial interest in oil and gas production other than the receipt of royalty payments which do not exceed a five-year average of six hundred dollars per year; one member shall be a person who by reason of previous training and experience may reasonably be said to represent the viewpoint of independent oil and gas operators; and one member shall be a person who by reason of previous training and experience may reasonably be said to represent the viewpoint of major oil and gas producers.

The chief of the office of oil and gas of the division of environmental protection and the chief of the office of water
resources of the division of environmental protection shall be
ex officio members.

The appointed members of the board shall be appointed for
overlapping terms of six years, except that the original appoint-
ments shall be for terms of two, four and six years, respectively.
Any member whose term expires may be reappointed by the
governor.

The board shall pay each member the same compensation
and expense reimbursement as is paid to members of the
Legislature for their interim duties as recommended by the
citizens legislative compensation commission and authorized
by law for each day or portion thereof engaged in the discharge
of official duties.

The chief of the office of oil and gas shall serve as chair of
the board. The board shall elect a secretary from its members.

Members of the board, before performing any duty, shall
take and subscribe to the oath required by section 5, article IV
of the constitution of West Virginia.

The board shall meet at such times and places as shall be
designated by the chair. It is the duty of the chair to call a
meeting of the board on the written request of two members.
Notice of each meeting shall be given in writing to each
member by the secretary at least five days in advance of the
meeting. A majority of members is a quorum for the transaction
of business.

(b) In addition to other powers and duties expressly set
forth elsewhere in this article, the board shall:

(1) Establish, and from time to time revise, forms of
application for employment as an oil and gas inspector and
supervising inspector, which shall include the applicant’s social
security number, and forms for written examinations to test the qualifications of candidates, with such distinctions, if any, in the forms for oil and gas inspector and supervising inspector as the board may from time to time deem necessary or advisable;

(2) Adopt and promulgate reasonable rules relating to the examination, qualification and certification of candidates for appointment, and relating to hearings for removal of inspectors or the supervising inspector, required to be held by this article. All of such rules shall be printed and a copy thereof furnished by the secretary of the board to any person upon request;

(3) Conduct, after public notice of the time and place thereof, examinations of candidates for appointment. By unanimous agreement of all members of the board, one or more members of the board or an employee of the division of environmental protection may be designated to give to a candidate the written portion of the examination;

(4) Prepare and certify to the director of the division of environmental protection a register of qualified eligible candidates for appointment as oil and gas inspectors or as supervising inspectors, with such differentiation, if any, between the certification of candidates for oil and gas inspectors and for supervising inspectors as the board may from time to time deem necessary or advisable. The register shall list all qualified eligible candidates in the order of their grades, the candidate with the highest grade appearing at the top of the list. After each meeting of the board held to examine such candidates and at least annually, the board shall prepare and submit to the director of the division of environmental protection a revised and corrected register of qualified eligible candidates for appointment, deleting from such revised register all persons: (a) Who are no longer residents of West Virginia; (b) who have allowed a calendar year to expire without, in writing, indicating their continued availability for such appointment; (c) who have
been passed over for appointment for three years; (d) who have
become ineligible for appointment since the board originally
certified that such persons were qualified and eligible for
appointment; or (e) who, in the judgment of at least three
members of the board, should be removed from the register for
good cause;

(5) Cause the secretary of the board to keep and preserve
the written examination papers, manuscripts, grading sheets and
other papers of all applicants for appointment for such period
of time as may be established by the board. Specimens of the
examinations given, together with the correct solution of each
question, shall be preserved permanently by the secretary of the
board;

(6) Issue a letter or written notice of qualification to each
successful eligible candidate;

(7) Hear and determine proceedings for the removal of
inspectors or the supervising inspector in accordance with the
provisions of this article;

(8) Hear and determine appeals of inspectors or the
supervising inspector from suspension orders made by said
director pursuant to the provisions of section two, article six,
chapter twenty-two of this code: Provided, That in order to
appeal from any order of suspension, an aggrieved inspector or
supervising inspector shall file such appeal in writing with the
oil and gas inspectors’ examining board not later than ten days
after receipt of the notice of suspension. On such appeal the
board shall affirm the action of said director unless it be
satisfied from a clear preponderance of the evidence that said
director has acted arbitrarily;

(9) Make an annual report to the governor concerning the
administration of oil and gas inspection personnel in the state
114 service; making such recommendations as the board considers
115 to be in the public interest; and

116 (10) Render such advice and assistance to the director of the
117 division of environmental protection as the director shall from
118 time to time determine necessary or desirable in the perfor-
119 mance of such duties.

§22C-7-4. Termination date.

1 The oil and gas inspectors’ examining board shall terminate
2 on the first day of July, two thousand one, pursuant to the
3 provisions of article ten, chapter four of this code, unless sooner
4 terminated, continued or reestablished pursuant to the provi-
5 sions of that article.

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CHAPTER 237

(S. B. 165 — By Senators Bowman, Bailey, Ball, Dawson, Kessler,
McCabe, Minard, Redd, Wooton, Boley and Minear)

[Passed February 7, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article twelve, chapter
twenty-two-c of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to continuing the
membership in the Ohio River valley water sanitation commis-
sion.

Be it enacted by the Legislature of West Virginia:

That section six, article twelve, chapter twenty-two-c of the code
of West Virginia, one thousand nine hundred thirty-one, as amended,
be amended and reenacted to read as follows:
ARTICLE 12. OHIO RIVER VALLEY WATER SANITATION COMMISSION.

§22C-12-6. When article effective; findings; continuation.

This article shall take effect and become operative and the compact be executed for and on behalf of this state only from and after the approval, ratification and adoption and entering into thereof by the states of New York, Pennsylvania, Ohio and Virginia.

After having conducted a preliminary performance review through its joint committee on government operations, pursuant to article ten, chapter four of this code, the Legislature hereby finds and declares that West Virginia should remain a member of the compact. Accordingly, notwithstanding the provisions of article ten, chapter four of this code, West Virginia shall continue to be a member of this compact until the first day of July, two thousand six, unless sooner terminated, continued or reestablished by act of the Legislature.

CHAPTER 238

(H. B. 4774 — By Delegates Douglas, Butcher, Caputo, Prunty, Flanigan, H. White and Willison)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article one, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the authority of the commissioner of the bureau of employment programs.

Be it enacted by the Legislature of West Virginia:
That section one, article one, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.

§23-1-1. Commissioner of the bureau of employment programs; compensation programs performance council; official seal; continuation of authority of commissioner; legal services; rules.

(a) The commissioner of the bureau of employment programs appointed under the provisions of section one, article two, chapter twenty-one-a of this code, has the sole responsibility for the administration of this chapter except for such matters as are entrusted to the compensation programs performance council created pursuant to section one, article three, chapter twenty-one-a of this code. In the administration of this chapter, the commissioner shall exercise all the powers and duties described in this chapter and in article two, chapter twenty-one-a of this code.

(b) The commissioner is authorized to promulgate rules and regulations to implement the provisions of this chapter.

(c) The commissioner shall have an official seal for the authentication of orders and proceedings, upon which seal shall be engraved the words "West Virginia Commissioner of Employment Programs" and such other design as the commissioner may prescribe. The courts in this state shall take judicial notice of the seal of the commissioner and in all cases copies of orders, proceedings or records in the office of the West Virginia commissioner of employment programs shall be equal to the original in evidence.

(d) Pursuant to the provisions of article ten, chapter four of this code, the commissioner of the bureau of employment
programs shall continue to administer this chapter until the first day of July, two thousand four.

(e) The attorney general shall perform all legal services required by the commissioner under the provisions of this chapter: Provided, That in any case in which an application for review is prosecuted from any final decision of the workers’ compensation appeal board to the supreme court of appeals, as provided by section four, article five of this chapter, or in any court proceeding before the workers’ compensation appeal board, or in any proceedings before the office of judges, or in any case in which a petition for an extraordinary writ is filed in the supreme court of appeals or in any circuit court, in which such representation shall appear to the commissioner to be desirable, the commissioner may designate a regular employee of this office, qualified to practice before such court to represent the commissioner upon such appeal or proceeding, and in no case shall the person so appearing for the commissioner before the court receive remuneration therefor other than such person’s regular salary.

CHAPTER 239


[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article five, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the office of administrative law judges.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. REVIEW.

§23-5-8. Continuation of office of administrative law judges; powers of chief administrative law judge and said office.

(a) The workers' compensation office of administrative law judges previously created pursuant to chapter twelve, acts of the Legislature, one thousand nine hundred ninety, second extraordinary session, is hereby continued and designated to be an integral part of the workers' compensation system of this state. The office of judges shall be under the supervision of a chief administrative law judge who shall be appointed by the governor, with the advice and consent of the Senate. The previously appointed incumbent of that position who was serving on the second day of February, one thousand nine hundred ninety-five, shall continue to serve in that capacity unless subsequently removed as provided for in subsection (b) of this section.

(b) The chief administrative law judge shall be a person who has been admitted to the practice of law in this state and shall also have had at least four years of experience as an attorney. The chief administrative law judge's salary shall be set by the compensation programs performance council created in section one, article three, chapter twenty-one-a of this code. Said salary shall be within the salary range for comparable chief administrative law judges as determined by the state personnel board created by section six, article six, chapter twenty-nine of this code. The chief administrative law judge may only be removed by a vote of two thirds of the members of the compensation programs performance council and shall not be removed except for official misconduct, incompetence, neglect of duty, gross immorality or malfeasance and then only after he or she
has been presented in writing with the reasons for his or her removal and is given opportunity to respond and to present evidence. No other provision of this code purporting to limit the term of office of any appointed official or employee or affecting the removal of any appointed official or employee shall be applicable to the chief administrative law judge.

(c) By and with the consent of the commissioner, the chief administrative law judge shall employ administrative law judges and other personnel as are necessary for the proper conduct of a system of administrative review of orders issued by the workers' compensation division which orders have been objected to by a party, and all such employees shall be in the classified service of the state. Qualifications, compensation and personnel practice relating to the employees of the office of judges, other than the chief administrative law judge, shall be governed by the provisions of the statutes, rules and regulations of the classified service pursuant to article six, chapter twenty-nine of this code. All such additional administrative law judges shall be persons who have been admitted to the practice of law in this state and shall also have had at least two years of experience as an attorney. The chief administrative law judge shall supervise the other administrative law judges and other personnel which collectively shall be referred to in this chapter as the office of judges.

(d) The administrative expense of the office of judges shall be included within the annual budget of the workers' compensation division.

(e) Subject to the approval of the compensation programs performance council pursuant to subdivisions (b) and (c), section seven, article three, chapter twenty-one-a of this code, the office of judges shall from time to time promulgate rules of practice and procedure for the hearing and determination of all objections to findings or orders of the workers' compensation division pursuant to section one of this article. The office of judges shall not have the power to initiate or to promulgate
legislative rules as that phrase is defined in article three, chapter
twenty-nine-a of this code.

(f) The chief administrative law judge shall continue to
have the power to hear and determine all disputed claims in
accordance with the provisions of this article, establish a
procedure for the hearing of disputed claims, take oaths,
examine witnesses, issue subpoenas, establish the amount of
witness fees, keep such records and make such reports as are
necessary for disputed claims, and exercise such additional
powers, including the delegation of such powers to administra-
tive law judges or hearing examiners as may be necessary for
the proper conduct of a system of administrative review of
disputed claims. The chief administrative law judge shall make
such reports as may be requested of him or her by the compen-
sation programs performance council.

(g) Pursuant to the provisions of article ten, chapter four of
this code, the office of judges shall continue to exist until the
first day of July, two thousand one, unless sooner terminated,
continued or reestablished by act of the Legislature.

CHAPTER 240

(S. B. 396 — By Senators Bowman, Ball, Dawson, Kessler, McCabe,
Minard, Plymale, Redd, Walker, Wooton, Boley and Minear)

[Passed March 9, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter
twenty-five of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to continuing the
division of corrections.

Be it enacted by the Legislature of West Virginia:
That section two, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.


1 Pursuant to the provisions of article ten, chapter four of this code, the division of corrections shall continue to exist until the first day of July, two thousand two, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.

CHAPTER 241

(S. B. 449 — By Senators Bowman, Bailey, Ball, Dawson, Kessler, McCabe, Minard, Redd, Snyder, Boley and Minear)

[Passed March 10, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article eighteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section twenty-four, all relating to continuing the state rail authority.

Be it enacted by the Legislature of West Virginia:

That section four, article eighteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section twenty-four, all to read as follows:
ARTICLE 18. WEST VIRGINIA STATE RAIL AUTHORITY.

§29-18-4. West Virginia state rail authority continued; organization of authority; appointment of members; term of office, compensation and expenses; director of authority; termination date.


§29-18-4. West Virginia state rail authority continued; organization of authority; appointment of members; term of office, compensation and expenses; director of authority; termination date.

(a) The West Virginia railroad maintenance authority, heretofore created and redesignated the West Virginia state rail authority, is hereby continued. References in this code to the West Virginia railroad maintenance authority shall be understood and taken to mean the West Virginia state rail authority. Nothing in this article is intended to invalidate any action or obligation of the West Virginia railroad maintenance authority undertaken prior to the effective date of this article. The authority is a governmental instrumentality of the state and a body corporate. The exercise by the authority of the powers conferred by this article and the carrying out of its purposes and duties shall be deemed and held to be, and are hereby determined to be, essential governmental functions and for a public purpose.

(b) The authority shall consist of seven members. The secretary of the department of transportation shall be chairman: Provided, That the secretary may appoint a designee to act in his or her stead at meetings of the authority. The other six members shall be appointed by the governor, by and with the advice and consent of the Senate, for a term of six years. Of the members of the authority first appointed, two shall be appointed for a term ending on the thirtieth day of June, one thousand nine hundred seventy-seven, two shall be appointed for a term ending two years thereafter and two shall be appointed for a term ending four years thereafter. A person appointed to fill a
vacancy occurring prior to the expiration of the term for which
his predecessor was appointed shall be appointed only for the
remainder of such term. Each authority member shall serve
until the appointment and qualification of his successor. No
more than three of the appointed authority members shall at any
one time belong to the same political party. Appointed authority
members may be reappointed to serve additional terms.

(c) All members of the authority shall be citizens of the
state. Each appointed member of the board, before entering
upon his duties, shall comply with the requirements of article
one, chapter six of this code and give bond in the sum of
twenty-five thousand dollars in the manner provided in article
two, chapter six of this code. The governor may remove any
authority member as provided in section four, article six,
chapter six of this code.

(d) Annually the authority shall elect one of its members as
vice chairman, and shall appoint a secretary-treasurer, who need
not be a member of the authority. Four members of the author-
ity shall constitute a quorum and the affirmative vote of four
members shall be necessary for any action taken by vote of the
authority. No vacancy in the membership of the authority shall
impair the rights of a quorum by such vote to exercise all the
rights and perform all the duties of the authority. The person
appointed as secretary-treasurer, including an authority member
if he is so appointed, shall give bond in the sum of fifty
thousand dollars in the manner provided in article two, chapter
six of this code.

(e) The secretary of the department of transportation shall
not receive any compensation for serving as the authority
chairman. Each of the six appointed members of the authority
shall receive the same compensation and expense reimburse-
ment as is paid to members of the Legislature for their interim
duties as recommended by the citizens legislative compensation
commission and authorized by law for each day or substantial
portion thereof engaged in the discharge of official duties. All such compensation and expenses incurred shall be payable solely from funds of the authority or from funds appropriated for such purpose by the Legislature and no liability or obliga-
tion shall be incurred by the authority beyond the extent to which moneys are available from funds of the authority or from such appropriations.

(f) There shall also be a director of the authority appointed by the authority, with the consent of the secretary.


Pursuant to the provisions of article ten, chapter four of this code, the West Virginia state rail authority shall continue to exist until the first day of July, two thousand two, unless sooner terminated, continued or reestablished by act of the Legislature.

CHAPTER 242

(S. B. 229 — By Senators Bowman, Bailey, Dawson, Kessler, McCabe, Minard, Redd, Walker, Wooton, Boley and Minear)

[Passed March 9, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twenty-one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the public defender services.

Be it enacted by the Legislature of West Virginia:

That section three, article twenty-one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 21. PUBLIC DEFENDER SERVICES.

§29-21-3. Establishment of public defender services, termination date.

There is hereby created an executive agency known as public defender services. The agency shall administer, coordinate and evaluate programs by which the state provides legal representation to indigent persons, monitor the progress of various delivery systems and recommend improvements. The agency shall maintain its office at the state capitol.

Pursuant to the provisions of article ten, chapter four of this code, public defender services shall continue to exist until the first day of July, two thousand two, unless sooner terminated, continued or reestablished by act of the Legislature.

CHAPTER 243

(S. B. 450 — By Senators Bowman, Bailey, Ball, Dawson, Kessler, McCabe, Minard, Redd, Snyder, Boley and Minear)

[Passed March 7, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the board of medicine.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.
§30-3-18. Continuation of board.

The board of medicine shall continue to exist until the first day of July, two thousand one, pursuant to the provisions of article ten, chapter four of this code, to allow for the completion of a regulatory board review by the joint committee on government operations.

CHAPTER 244

(H.B. 4158 — By Delegates Douglas, Butcher, Caputo, Prunty, Willison, Modesitt and Perdue)

[Passed February 22, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article thirty-one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the board of examiners in counseling.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 31. LICENSED PROFESSIONAL COUNSELORS.

§30-31-15. Continuation of board.

Pursuant to article ten, chapter four of this code, the West Virginia board of examiners in counseling shall continue to exist until the first day of July, two thousand six, unless sooner terminated, continued or reestablished by act of the Legislature.

*Clerk's Note: This section was also amended by H. B. 4060 (Chapter 223), which passed prior to this act.
AN ACT to amend and reenact section twenty-two, article thirty-two, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the board of examiners for speech-language pathology and audiology.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 32. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS.


1 The West Virginia board of examiners for speech-language pathology and audiology shall be terminated pursuant to the provisions of article ten, chapter four of this code on the first day of July, two thousand two, unless sooner terminated or unless continued or reestablished pursuant to that article.
AN ACT to amend and reenact section seventeen, article thirty-four, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the board of respiratory care practitioners.

Be it enacted by the Legislature of West Virginia:

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

§30-34-17. Termination.

The board provided for in this article shall terminate pursuant to the provisions of article ten, chapter four of this code, on the first day of July, two thousand two, unless terminated, continued or reestablished by act of the Legislature.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 35. BOARD OF DIETITIANS.


The board of examiners for licensed dietitians shall be terminated pursuant to the provisions of article ten, chapter four of this code, on the first day of July, two thousand one, unless sooner terminated, continued or reestablished pursuant to the provisions of such article.

CHAPTER 248

(H. B. 4157 — By Delegates Douglas, Butcher, Caputo, Prunty, Willison, Marshall and Angotti)

[Passed February 22, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article two-c, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the family protection services board.

Be it enacted by the Legislature of West Virginia:

That section fourteen, article two-c, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 2C. DOMESTIC VIOLENCE ACT.

§48-2C-14. Continuation of board.

After having conducted a performance audit through its joint committee on government operations, pursuant to article ten, chapter four of this code, the Legislature hereby finds and declares that the family protection services board should be continued and reestablished. Accordingly, notwithstanding the provisions of said article, the family protection services board shall continue to exist until the first day of July, two thousand six, unless sooner terminated, continued or reestablished by act of the Legislature.

CHAPTER 249

(S. B. 397 — By Senators Bowman, Ball, Dawson, Kessler, McCabe, Minard, Plymale, Redd, Walker, Wooton, Boley and Minear)

[Passed March 6, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article two, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the child support enforcement division.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WEST VIRGINIA SUPPORT ENFORCEMENT COMMISSION; ESTABLISHMENT AND ORGANIZATION.
§48A-2-12. Establishment of the child support enforcement division; cooperation with the division of human services; continuation.

1 (a) Effective the first day of July, one thousand nine hundred ninety-five, there is hereby established in the department of health and human resources the child support enforcement division. The division is under the immediate supervision of the director, who is responsible for the exercise of the duties and powers assigned to the division under the provisions of this chapter. The division is designated as the single and separate organizational unit within this state to administer the state plan for child and spousal support according to 42 U.S.C. §654(3).

(b) The division of human services shall cooperate with the child support enforcement division. At a minimum, such cooperation shall require that the division of human services:

(1) Notify the child support enforcement division when the division of human services proposes to terminate or provide public assistance payable to any obligee;

(2) Receive support payments made on behalf of a former or current recipient to the extent permitted by Title IV-D, Part D of the Social Security Act; and

(3) Accept the assignment of the right, title or interest in support payments and forward a copy of the assignment to the child support enforcement division.

(c) Pursuant to the provisions of article ten, chapter four of this code, the child support enforcement division shall continue to exist until the first day of July, two thousand two, unless sooner terminated, continued or reestablished by act of the Legislature.
CHAPTER 250

(H. B. 4411 — By Delegates Douglas, Butcher, Caputo, Prunty, Willison, Angotti and Stalnaker)

[Passed March 7, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-four, article four, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the family law masters system.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. PROCEEDING BEFORE A FAMILY LAW MASTER.

§48A-4-24. Continuation of family law masters system.

1 After having conducted a performance and fiscal audit through its joint committee on government operations, pursuant to article ten, chapter four of this code, the Legislature hereby finds and declares the family law masters system should be continued and reestablished as recreated in article two-a, chapter fifty-one of this code.

CHAPTER 251

(Com. Sub. for H. B. 4526 — By Delegates Cann, Martin, Michael, Kominar, Beane, Campbell and Leach)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one-a, article one-c, chapter eleven of the code of West Virginia, one thousand nine hundred
Be it enacted by the Legislature of West Virginia:

That section one-a, article one-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section seven-a, article three of said chapter be amended and reenacted; and that section three, article five of said chapter be amended and reenacted, all to read as follows:

Article

1C. Fair and Equitable Property Valuation.

3. Assessments Generally.

5. Assessment of Personal Property.

ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.

§11-1C-1a. Further legislative findings and declarations; effect of declarations and clarification of chattel interests in real or tangible personal property.

1 (a) The Legislature hereby finds that:

2 (1) The voters of this state, in the general election held in
3 the year one thousand nine hundred eighty-four, ratified
4 amendment five to the constitution of West Virginia which
5 essentially provides that once the first statewide reappraisal of
6 property pursuant to section one-b, article ten of the constitu-
7 tion is implemented and first employed to fix values for ad
8 valorem property tax purposes, no intangible personal property
9 shall be subject to ad valorem property taxation except as
10 provided by general law enacted after ratification of amendment
11 five;
(2) In ratifying amendment five, the voters intended for intangible personal property to become exempt from ad valorem property tax at some point after ratification, except as provided in general legislation enacted subsequent to ratification of amendment five;

(3) Due to numerous problems, actual or perceived, with the results of the first statewide reappraisal under section one-b, article ten of the constitution, and the public's lack of confidence in those results, the first statewide reappraisal was never implemented and results were never employed to fix values for ad valorem property tax purposes;

(4) The Legislature responded to these problems, actual or perceived, by enacting this article which, as its primary purpose, resulted in the making of the second statewide reappraisal of property for ad valorem property tax purposes, which now results in all property being assessed and taxed at sixty percent of its market value, except as otherwise provided by general law; and

(5) The intent and objective of the voters in causing the first statewide reappraisal to be made under section one-b, article ten of the constitution, has now been achieved, although not in the manner originally intended by the voters when they ratified amendment five, and that the will and objective of the people in ratifying amendment five will unintentionally be circumvented unless the Legislature acts to prevent such a result.

(b) The Legislature, therefore, does hereby declare that:

(1) It has the power and authority under the constitution and these circumstances to implement amendment five;

(2) The provisions of amendment five shall be implemented beginning tax year one thousand nine hundred ninety-eight and
thereafter, notwithstanding any other provision in this article other than section one-b;

(3) Chattel interests in real or tangible personal property are tangible property for ad valorem property tax purposes, which shall be assessed and taxed in the levy classification in which tangible personal property is taxed for ad valorem property tax purposes, notwithstanding any other provision in this chapter; and

(4) The property of banks and savings and loans shall be assessed and taxed like that of other corporations beginning tax year one thousand nine hundred ninety-eight.

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-7a. Chattel interests in real and tangible personal property.

For ad valorem property tax purposes, chattel interests in real property and chattel interest in tangible personal property are hereby defined to be interests in tangible personal property and are to be assessed and taxed as such. As so defined, chattel interest in real property and chattel interests in tangible personal property are not intangible personal property for ad valorem property tax purposes.

ARTICLE 5. ASSESSMENT OF PERSONAL PROPERTY.

§11-5-3. Definitions.

The words “personal property,” as used in this chapter includes all fixtures attached to land, if not included in the valuation of such land entered in the proper landbook; all things of value, moveable and tangible, which are the subjects of ownership; all chattels real and personal; all notes, bonds, and accounts receivable, stocks and all other intangible property.

“Agriculture” means the cultivation of the soil, including the planting and harvesting of crops and the breeding and management of livestock.
“Horticulture” means plant production of every character except forestry.

“Grazing” means the use of land for pasturage.

“Products of agriculture” means those things the existence of which follows directly from the activity of agriculture, horticulture or grazing, including dairy, poultry, bee and any other similar products, whether in the natural form or processed as an incident to the marketing of the raw material.

“Producer” means the person who is actually engaged in the agriculture, horticulture and grazing which gives existence and fruition to products of agriculture as distinguished from the broker or middleman.

“Tax year” means the calendar year following the July first assessment day or, in the case of a public service business assessed pursuant to article six of this chapter, the calendar year beginning on the January first assessment day.

“While owned by the producer” means while title is in the producer as above defined.

“Employed exclusively” means that the preponderant and the sole gainful use is for the designated purpose.

CHAPTER 252

(Com. Sub. for S. B. 79 — By Senators Craigo, Ball, Kessler, Bowman, Anderson, Dittmar, Ross, Plymale and Sharpe)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-1b. Recordation of plat or designation of land use not to be basis for assessment; factors for valuation; legislative rule; effective dates.

(a) The recordation of a plan or plat, or the designation of proposed land use by a county or municipal planning authority, shall not be used by the assessor as a basis in the valuation or assessment of real property for the purposes of taxation, except as hereafter provided. The valuation of real property contained in a recorded plan or plat is as follows:

(1) When a lot or parcel within a recorded plan or plat is sold, that lot shall be revalued by the county assessor or tax commissioner. In no event may the remaining lots within the recorded plan or plat be automatically revalued solely based upon the sale of other lots within the recorded plan or plat.

(2) When land contained within a recorded plan or plat is first developed and actually used for a commercial, residential or industrial purpose, the land shall be revalued by the county assessor or the tax commissioner, depending upon whoever has authority over the land, but in no event may the remaining lots within the recorded plan or plat be automatically revalued
solely based upon the sale of other lots within the recorded plan or plat.

(b) For valuation of the remaining lots or parcels or undeveloped portion within the recorded plan or plat, the following factors shall be taken into consideration in determining the valuation: (1) Availability of improved roads; (2) availability of sewage disposal and drinking water supply, including, but not limited to, the use of such factors as availability of public water and sewage systems, private water systems, water wells, private sewage and septic systems or potential private sewage and septic systems; (3) availability of electrical, telephone and other utility services; and (4) percentage of completion of improvements and infrastructure development. The assessor shall annually determine the percentage of completion of improvements and infrastructure development. The tax commissioner shall propose a legislative rule for submission to the Legislature pursuant to the provisions of article three, chapter twenty-nine-a of this code, which rule shall describe in detail the methodology and use of the factors set out above, as well as any other factors determined by the tax commissioner to be applicable, for valuation of percentage of completion of improvements and infrastructure development.

The remaining lots or parcels or undeveloped portion within the recorded plan or plat are not managed timberland for purposes of valuation of management timberland under section eleven and eleven-a, article one-c, of this chapter. For purposes of classification of property for levy purposes under section five, article eight of this chapter, developed lots or parcels shall not be reclassified from Class III to Class II or from Class IV to Class II until the developed lot or parcel is used and occupied by the owner thereof exclusively for residential purposes as defined in section three, article four of this chapter.

(c) The designation of proposed land use by a county or municipal planning authority may not be used or considered by
an assessor in determining the appraised value of property
included under a designation of proposed land use by a county
or municipal planning authority until such time as the actual use
of the real property has changed to correspond to the proposed
use. For purposes of this subsection, the actual use of real
property shall be treated as having changed to correspond to the
proposed use as improvements on the property necessary for the
proposed use are completed: Provided, That in valuing the
property before its change to actual use, the assessor may
consider the factors described in subsection (b) of this section.

(d) The amendments made to this section by the Legislature
in two thousand shall become effective on the first day of July,
two thousand, and shall be effective as to all plans or plats filed
after the thirtieth day of June, two thousand. The provisions of
the amendments made to this section in two thousand do not
apply to unsold lots or parcels or undeveloped land contained
within recorded plans or plats which were recorded prior to the
first day of July, two thousand: Provided, That in no event may
the appraised value of unsold lots or parcels or undeveloped
land contained within these recorded plans or plats be less than
their appraised value as of first day of July, two thousand.

CHAPTER 253

(Com. Sub. for S. B. 191 — By Senators Minard and Sharpe)

[Passed March 9, 2000, in effect July 1, 2000. Approved by the Governor.]
or assessor to initiate an application for relief on behalf of the taxpayer; providing the sheriff or county commission the option of refunding taxes erroneously assessed instead of crediting amount towards future tax liability when more than one year has passed since property books were delivered to the sheriff; limiting the time in which taxpayer is repaid in the form of a credit; and providing for refund of uncredited balance.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-27. Relief in county commission from erroneous assessments.

(a) Any taxpayer, or the prosecuting attorney or tax commissioner, upon behalf of the state, county and districts, claiming to be aggrieved by any entry in the property books of the county, including entries with respect to classification and taxability of property, resulting from a clerical error or a mistake occasioned by an unintentional or inadvertent act as distinguished from a mistake growing out of negligence or the exercise of poor judgment, may, within one year from the time the property books are delivered to the sheriff or within one year from the time such clerical error or mistake is discovered or reasonably could have been discovered, apply for relief to the county commission of the county in which such books are made out: Provided, That upon the discovery of any such clerical error or mistake by the sheriff or assessor, or either officer having knowledge thereof, the sheriff or assessor shall initiate an application for relief from the erroneous assessment on behalf of the taxpayer or cause notice to be sent to any taxpayer affected by the clerical error or mistake by first-class
United States mail advising the taxpayer of the right to make application for relief from the erroneous assessment. Before the application is heard, the taxpayer shall give notice to the prosecuting attorney of the county, or the state shall give notice to the taxpayer, as the case may be. The application, whether by the taxpayer or the state, shall have precedence over all other business before the court; but any order or judgment shall show that either the prosecuting attorney or tax commissioner was present defending the interests of the state, county and districts: Provided, however, That the provisions of this section shall not be construed as giving county commissions jurisdiction to consider any question involving the classification or taxability of property which has been the subject matter of an appeal under the provisions of section twenty-four-a of this article; and any other such clerical error or mistake involving the classification or taxability of property, may be corrected by the county commission under the provisions of this section only when approved, in writing, by the county assessor.

(b) In the event it is ascertained that the taxpayer is entitled to relief, any excess taxes already paid shall be refunded and, if charged but not paid, the applicant shall be released from the payment of such excess: Provided, That in the event a mistake or error is discovered more than one year after the property books for the year or years in question are delivered to the sheriff, any relief granted to the taxpayer shall be in the form of a credit against taxes owing for up to the following two years: Provided, however, That if there are insufficient future taxes to credit or if the sheriff or county commission determines that a refund is appropriate, then the sheriff or county commission shall refund the uncredited balance to the taxpayer.

(c) Whenever any correction is made by the county commission, the clerk shall certify copies of the order to the auditor, sheriff and assessor, and in the case of real estate, the assessor shall thereupon make a correction in accordance with
the order in his or her landbook for the next year. Any such order delivered to the sheriff or other collecting officer shall restrain him or her from collecting so much as is erroneously charged against the taxpayer, and, if already collected, shall compel him or her to refund the money if such officer has not already paid it into the treasury. In either case, when endorsed by the person exonerated, it shall be sufficient voucher to entitle the officer to a credit for so much in his or her settlement which he or she is required to make. If the applicant is the state, the order certified to the sheriff shall show the correct amount of taxes due the state, county and districts and shall be sufficient to authorize collection in the same manner as for other state, county and district taxes.

CHAPTER 254

(S. B. 421 — By Senators Craigo, McCabe, Dittmar, Unger, Walker, Ross and Boley)

[Passed March 10, 2000; in effect July 1, 2000. Approved by the Governor.]

AN ACT to amend and reenact section two, article six-f, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to adding “chemical” and “steel” to the description of an alliance zone.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6F. SPECIAL METHOD FOR APPRAISING QUALIFIED CAPITAL ADDITIONS TO MANUFACTURING FACILITIES.
§11-6F-2. Definitions.

As used in this article, the term:

(a) "Certified capital addition property" means all real property and personal property included within or to be included within a qualified capital addition to a manufacturing facility that has been certified by the state tax commissioner in accordance with section four of this article: Provided, That airplanes and motor vehicles licensed by the division of motor vehicles shall in no event constitute certified capital addition property.

(b) "Manufacturing facility" means any factory, mill, chemical plant, refinery, warehouse, building or complex of buildings, including land on which it is located, and all machinery, equipment, improvements and other real property and personal property located at or within the facility used in connection with the operation of the facility in a manufacturing business.

(c) "Personal property" means all property specified in subdivision (q), section ten, article two, chapter two of this code and includes, but is not limited to, furniture, fixtures, machinery and equipment, pollution control equipment, computers and related data processing equipment, spare parts and supplies.

(d) "Qualified capital addition to a manufacturing facility" means all real property and personal property, the combined original cost of all of the property which exceeds fifty million dollars to be constructed, located or installed at or within two miles of a manufacturing facility owned or operated by the person making the capital addition that has a total original cost before the capital addition of at least one hundred million dollars: Provided, That if the capital addition is made in a steel, chemical or polymer alliance zone as designated from time-to-time by executive order of the governor, then the person
making the capital addition may for purposes of satisfying the
requirements of this subsection join in a multiparty project with
a person owning or operating a manufacturing facility that has
a total original cost before the capital addition of at least one
hundred million dollars if the capital addition creates additional
production capacity of existing or related products or feedstock
or derivative products respecting the manufacturing facility.

(e) "Real property" means all property specified in subdivi-
sion (p), section ten, article two, chapter two of this code and
includes, but is not limited to, lands, buildings and improve-
ments on the land such as sewers, fences, roads, paving and
leasehold improvements.

CHAPTER 255

(Com. Sub. for S. B. 517 — By Senator Ross)

[Passed March 9, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend article six-g, chapter eleven of the code of West
Virginia, one thousand nine hundred thirty-one, as amended, by
adding thereto two new sections, designated sections three-a and
three-b, all relating to paying ad valorem taxes on commercial
motor vehicles registered for a proportion of an entire year; ad
valorem taxes on transferred vehicles; and the apportionment of
the fees.

Be it enacted by the Legislature of West Virginia:

That article six-g, chapter eleven of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, be amended by
adding thereto two new sections, designated sections three-a and
three-b, all to read as follows:
ARTICLE 6G. ASSESSMENT OF INTERSTATE PUBLIC SERVICE CORPORATION MOTOR VEHICLE BUSINESS REGISTERED UNDER A PROPORTIONAL REGISTRATION AGREEMENT.

§ 11-6G-3a. Reduced fees for portion of year.
§ 11-6G-3b. Reduced fees for transfer of vehicles.

§ 11-6G-3a. Reduced fees for portion of year.

1 The ad valorem fees prescribed in section three of this article are for the entire fiscal year: Provided, That when application for a proportional registration is made between the first day of August and the thirty-first day of August, inclusive, in any fiscal year, the fee for registration is eleven-twelfths of the yearly fee; when application for the registration is made between the first day of September and the thirtieth day of September, inclusive, in any fiscal year, the fee for registration is ten-twelfths of the yearly fee; when application for the registration is made between the first day of October and the thirty-first day of October, inclusive, in any fiscal year, the fee for registration is nine-twelfths of the yearly fee; when application for the registration is made between the first day of November and the thirtieth day of November, inclusive, in any fiscal year, the fee for registration is eight-twelfths of the yearly fee; when application for registration is made between the first day of December and the thirty-first day of December, inclusive, in any fiscal year, the fee for registration is seven-twelfths of the yearly fee; when application for registration is made between the first day of January and the thirty-first day of January, inclusive, in any fiscal year, the fee for registration is one half of the yearly fee; when application for registration is made between the first day of February and the last day of February, inclusive, in any fiscal year, the fee for registration is five-twelfths of the yearly fee; when application for registration is made between the first day of March and the thirty-first day of March, inclusive, in any fiscal year, the fee for registration is one-third of the yearly fee; when application for registration is made between the first day of April and the thirty-first day of April, inclusive, in any fiscal year, the fee for registration is three-twelfths of the yearly fee; when application for registration is made between the first day of May and the thirty-first day of May, inclusive, in any fiscal year, the fee for registration is one-fourth of the yearly fee; when application for registration is made between the first day of June and the thirty-first day of June, inclusive, in any fiscal year, the fee for registration is one-sixth of the yearly fee; when application for registration is made between the first day of July and the thirty-first day of July, inclusive, in any fiscal year, the fee for registration is one-eighth of the yearly fee; when application for registration is made between the first day of August and the thirty-first day of August, inclusive, in any fiscal year, the fee for registration is eleven-twelfths of the yearly fee.
is made between the first day of April and the thirtieth day of April, inclusive, in any fiscal year, the fee for registration is one-fourth of the yearly fee; when application for registration is made between the first day of May and the thirty-first day of May, inclusive, in any fiscal year, the fee for registration is two-twelfths of the yearly fee; and when application for registration is made between the first day of June and the thirtieth day of June, inclusive, in any fiscal year, the fee for registration is one-twelfth of the yearly fee.

§11-6G-3b. Reduced fees for transfer of vehicles.

The ad valorem fees prescribed in sections three and three-a of this article shall be reduced in the amount of ad valorem fees paid on the original vehicle upon the transfer of registration by an owner from the original vehicle to another vehicle of the same class. The reduction in the amount of ad valorem fees paid on the original vehicle shall be prorated monthly up to the amount of ad valorem fees owed on the vehicle to which registration is being transferred. Any remainder of ad valorem fees paid on the original vehicle shall be reviewed by the interstate appeals board, created in section seven of this article.

CHAPTER 256

(Com. Sub. for S. B. 161 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article ten, chapter eleven 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 generally to requiring certain businesses to file informa-
tion returns to be used solely to analyze the fiscal and economic effects of the recommendations of the governor's commission on fair taxation; information required and deadlines for filing returns; legislative rules; tax credit incentives for filing; penalties for failure to file; confidentiality; and providing that unauthorized disclosure of information returns or information return information is subject to criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-22. Information returns and due date thereof.

(a) Information returns required. — The tax commissioner shall develop a representative statistical sample of persons who have business registration certificates under article twelve of this chapter. This sample shall be broad enough to reasonably predict revenues and to project how the recommendations of the governor's commission on fair taxation would impact different classifications of businesses, as well as the various forms of doing business in which those business activities are conducted. Persons included in the sample shall file an information return reporting information for the calendar year ending the thirty-first day of December, one thousand nine hundred ninety-nine, and for the calendar year ending the thirty-first day of December, two thousand. When a business files its federal tax returns on a fiscal year basis, the business include in its information return information for its fiscal years ending within the calendar years one thousand nine hundred ninety-nine and two thousand, respectively, except as otherwise prescribed in the rule promulgated pursuant to subsection (d) of this section.
(b) *Due date.* Information returns shall be due on the day the federal tax return or federal informational return is due during calendar year two thousand one, determined by including any extension of time to file the return. This information return shall be filed with the business’s West Virginia form 112, 112S, 120, 141, or, in the case of a sole proprietor, form 140. When the business is not required to file any of these West Virginia forms, the information return shall be filed as a separate document on or before the fifteenth day of the fifth month following the close of its year for tax accounting or financial accounting purposes ending the thirty-first day of December, one thousand nine hundred ninety-nine, or ending within calendar year two thousand but prior to the thirty-first day of December, two thousand, unless the tax commissioner grants an extension of time to file the information return. Information returns shall be filed in the form and pursuant to instructions prescribed by the tax commissioner. These returns shall require information as if the recommendations of the governor’s commission on fair taxation were in effect for the period covered by each information return.

(c) *Notification.* On or before the first day of July, two thousand, the tax commissioner shall notify each person selected to be a member of the statistical sample of the selection, and advise the person of the process by which the person will be receiving forms and instructions for filing an informational return after authorization of the same pursuant to subsection (d) of this section.

(d) *Legislative rules.*

(1) The tax commissioner shall propose legislative rules for promulgation pursuant to article three, chapter twenty-nine-a of this code. Notwithstanding any provision of article three, chapter twenty-nine-a of this code to the contrary, the tax commissioner shall submit finally approved proposed rules, including amendments, to the legislative rule-making and review committee on or before the thirty-first day of August, two thousand.
(2) The proposed rules shall include the actual content of information return to be completed and filed by each person selected to be a member of the statistical sample, as well as the actual content of the instructions to used by the person to complete the information return, proposed by the tax commissioner. The information required to be provided in the information return shall be, to the extent possible, only information that can be obtained by a selected member of the statistical sample from other tax or regulatory filings made by the selected member.

(3) The proposed rules shall, for the review of the Legislature, separately identify any additional information not obtainable from the filings described in subdivision (2) of this subsection that can be obtained from a selected member of the statistical sample, in the least expensive and intrusive manner for the selected person, that the tax commissioner determines is necessary for an adequate state fiscal analysis of the impact of the recommendations of the governor's commission on fair taxation.

(4) The proposed rules shall, for the review of the Legislature, separately identify any additional information not obtainable from the filings described in subdivision (2) of this subsection that can be obtained from a selected member of the statistical sample, in the least expensive and intrusive manner for the selected person, that the tax commissioner determines is necessary for an adequate state economic analysis of the impact of the recommendations of the governor's commission on fair taxation.

(e) Incentive to file. — To encourage the filing of complete and accurate information returns, the tax commissioner shall allow a two hundred dollar tax credit for each required information return that is filed electronically, within the meaning of article five, chapter thirty-nine of this code, and a credit of one
hundred fifty dollars for each such paper return filed. This credit shall be claimed against the person’s liability for tax under article twenty-three of this chapter. Unused credit may be claimed against the person’s liability for income tax under article twenty-one or twenty-four of this chapter for the tax year of the person in which the information return is filed. Alternatively, the tax commissioner may refund the amount of this credit to any person required to file information returns under this section.

(f) Civil money penalty. — Any person required to file an information return under this section who fails to file the return timely, determined with regard to any authorized extension of time for filing, or who files a return that is materially incorrect or incomplete shall pay a money penalty of one thousand dollars for each return that is not filed timely or that is filed timely but is materially inaccurate or incomplete. The tax commissioner is authorized to waive this penalty. This penalty shall be collected in the same manner as the penalties imposed by section nineteen of this article are collected.

(g) Confidentiality. —

(1) Information returns and information return information filed under this section shall be treated as returns and return information under the provisions of section five-d of this article. Such returns and return information shall be open to inspection by or disclosure to officers and employees of the department of tax and revenue whose official duties require such inspection or disclosure for the purpose of, but only to the extent necessary in, preparing economic or financial forecasts, projections, analyses, and statistical studies and conducting related activities.

(2) Persons authorized to receive information under this subdivision shall be treated as officers and employees of the state under the provisions of section five-d of this article.
120 Inspection or disclosure of information returns and information
121 return information shall also be permitted pursuant to a contract
122 between the proper officer of this state and a university in this
123 state when the purpose of the disclosure is to prepare economic
124 or financial forecasts, projections, analyses, and statistical
125 studies and conducting related activities regarding the recom-
126 mendations of the governor's commission on fair taxation.
127
128 (3) Except as otherwise provided in this section, no person
129 who receives an information return or information return
130 information under this section shall disclose the return or return
131 information to any person other than the taxpayer to whom it
132 relates except in a form which cannot be associated with, or
133 otherwise identify, directly or indirectly, a particular taxpayer.

CHAPTER 257

(H. B. 4589 — By Delegates Frederick, Yeager, Michael, Kominar, Stalnaker and Evans)

[Passed March 11, 2000; in effect April 1, 2000. Approved by the Governor.]

AN ACT to amend and reenact section three, article twelve-b, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the minimum severance tax on coal; and providing that the minimum severance tax is not imposed on coal mined from thin seams on which the reduced severance tax rate is imposed.

Be it enacted by the Legislature of West Virginia:

That section three, article twelve-b, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 12B. MINIMUM SEVERANCE TAX ON COAL.

§11-12B-3. Imposition of tax, credit.

(a) **Imposition of tax.** — Upon every person exercising the privilege of engaging within this state in severing, extracting, reducing to possession or producing coal for sale, profit or commercial use, there is hereby imposed an annual minimum severance tax equal to fifty cents per ton of coal produced by the taxpayer for sale, profit or commercial use during the taxable year: **Provided,** That for taxable years ending after the thirty-first day of May, one thousand nine hundred ninety-three, the minimum severance tax imposed on coal produced by the taxpayer for sale, profit or commercial use during such taxable year shall be seventy-five cents per ton, with such rate increase to apply only to tons of coal produced after the thirty-first day of May, one thousand nine hundred ninety-three: **Provided,** however, That for taxable years ending after the thirty-first day of December, one thousand nine hundred ninety-nine, the minimum severance tax on coal may not be imposed on any ton of coal produced on or after the first day of April, two thousand, on which the severance tax is imposed by the provisions of subsection (f), section three, article thirteen-a of this chapter.

(b) **Credit against article thirteen-a tax.** — A person who pays the minimum severance tax imposed by this article shall be allowed a credit against the severance tax imposed on the privilege of producing coal by section three, article thirteen-a of this chapter, but not including the additional severance tax on coal imposed by section six of article thirteen-a of this chapter or, for taxable years ending after the thirty-first day of December, one thousand nine hundred ninety-nine, the severance tax imposed by the provisions of subsection (f), section three, article thirteen-a of this chapter on coal produced on or after the first day of April, two thousand. The amount of credit allowed shall be equal to the liability of the taxpayer for the taxable year for payment of the minimum severance tax on coal imposed by
this article: *Provided, That the amount of credit allowed by this
section may not exceed the severance tax liability of the
taxpayer for the taxable year determined under section three of
that article exclusive of the additional tax on coal imposed by
section six of that article and, for taxable years ending after the
thirty-first day of December, one thousand nine hundred ninety-nine,
of the severance tax imposed by the provisions of subsec-
tion (f), section three, article thirteen-a of this chapter on coal
produced on or after the first day of April, two thousand, after
application of all credits to which the taxpayer may be entitled
except any credit allowed pursuant to chapter five-e of this
code, any credit for installment payments of estimated tax paid
pursuant to section six of this article during the taxable year and
any credit for overpayment of article thirteen-a tax. Notwith-
standing anything herein to the contrary, in no event may the
credit allowed under chapter five-e of this code be allowed as
a credit against the minimum severance tax imposed by this
article.

CHAPTER 258

(Com. Sub. for H. B. 4418 — By Delegates Caputo, Coleman,
Yeager, Shelton, Staton, Varner and Kuhn)

[Passed March 11, 2000; in effect July 1, 2000. Approved by the Governor.]

AN ACT to amend and reenact section three, article twelve-c, chapter
eleven of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to corporations providing the
name and address of the corporation’s parent corporation and
each subsidiary of the corporation licensed to do business in this
state.

*Be it enacted by the Legislature of West Virginia:*
That section three, article twelve-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 12C. CORPORATE LICENSE TAX.

§11-12C-3. Payment and collection of tax; deposit of money; return required.

(a) Payment and collection of tax. — When application is made to the secretary of state for a certificate of incorporation or authority to do business in this state, it shall be the duty of the applicant to pay all taxes and fees due under this article; and it shall be the duty of the secretary of state to collect the corporate license tax for the first year before issuing such certificate. Thereafter, on or before the first day of the license tax year next following the date of the certificate, and on or before the first day of each succeeding license tax year, such corporation shall pay and the tax commissioner shall collect such tax for a full license tax year together with the statutory attorney fee: Provided, That if the application is made on or after the first day of the second month preceding the beginning of the next license tax year, and before the first day of such license tax year, the secretary of state shall collect the tax for the full year beginning on such first day of the next license tax year in addition to the initial tax, together with the statutory attorney fee.

(b) Deposit of money. — The money so received by the secretary of state and the tax commissioner shall be paid by them into the state treasury.

(c) Returns. — Payment of the tax and statutory attorney fee required under the provisions of this section shall be accompanied by a return on forms provided by the tax commissioner for that purpose. The tax commissioner shall upon completion of processing such return, forward it to the secretary
of state, together with a list of all corporations which have paid 
such tax. Such return shall contain (1) the address of its 
principal office; (2) the names and mailing addresses of its 
officers and directors; (3) the name and mailing address of the 
person on whom notice of process may be served; (4) the name 
and address of the corporation’s parent corporation and of each 
subsidiary of the corporation licensed to do business in this 
state and such other information as the tax commissioner deems 
appropriate. Notwithstanding any other provision of law to the 
contrary, the secretary of state shall upon request of any person 
disclose (A) the address of the corporation’s principal office; 
(B) the names and addresses of its officers and directors; (C) 
the name and mailing address of the person on whom notice of 
process may be served; and (D) the name and address of each 
subsidiary of the corporation and the corporation’s parent 
corporation.

CHAPTER 259

(H. B. 4416 — By Delegates Beane, Frederick, Facemyer, 
Coleman, Yeager, Michael and Kominar)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article thirteen-a, chapter eleven of the 
code of West Virginia, one thousand nine hundred thirty-one, as 
amended, by adding thereto a new section, designated section 
three-d, relating to exemptions of coalbed methane production 
from imposition of the severance tax.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-3d. Imposition of tax on privilege of severing coalbed methane.

(a) The Legislature hereby finds and declares the following:

(1) That coalbed methane is underdeveloped and an under-utilized resource within this state which, where practicable, should be captured and not be vented or wasted;

(2) The health and safety of persons engaged in coal mining is a paramount concern to the state. The Legislature intends to preserve coal seams for future safe mining, to facilitate the expeditious, safe evacuation of coalbed methane from the coalbeds of this state, and to ensure the safety of miners by encouraging the advance removal of coalbed methane;

(3) The United States environmental protection agency's coalbed methane outreach program encourages United States coal mines in the United States to remove and use methane that is otherwise wasted during mining. These projects have important economic benefits for the mines and their local economies while they also reduce emissions of methane; and

(4) The initial costs of development of coalbed methane wells can be large in comparison to conventional wells and deoxygenation and water removal increase development expenditures.

The Legislature, therefore, concludes that an incentive to coalbed methane development should be implemented to encourage capture of methane gas that would otherwise be vented to the atmosphere.
(b) *Imposition of tax.* — In lieu of the annual privilege tax imposed on the severance of natural gas or oil pursuant to section three-a, article thirteen-a, for the privilege of engaging or continuing within this state in the business of severing coalbed methane for sale, profit or commercial use, there is hereby levied and shall be collected from every person exercising such privilege an annual privilege tax: *Provided,* That effective for taxable years beginning on or after the first day of January, two thousand one, there is an exemption from the imposition of the tax provided for in this article for a maximum period of five years for all coalbed methane produced from any coalbed methane well placed in service after the first day of January, two thousand. For purposes of this section, the terms "coalbed methane" and "coalbed methane well" have the meaning ascribed to them in section two, article twenty-one, chapter twenty-two of this code. The exemption from tax provided by this section is applicable to any coalbed methane well placed in service before the first day of January, two thousand eleven.

(c) *Rate and measure of tax.* — The tax imposed on subsection (b) of this section is five percent of the gross value of the coalbed methane produced, as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided in this article.

(d) *Tax in addition to other taxes.* — The tax imposed by this section applies to all persons severing coalbed methane in this state, and is in addition to all other taxes imposed by law.

(e) Except as specifically provided in this section, application of the provisions of this article apply to coalbed methane in the same manner and with like effect as the provisions apply to natural gas.
AN ACT to amend and reenact sections nine-d and twenty, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three-d, ten and eleven, article fifteen-a of said chapter; and to amend and reenact section seventy-four, article twenty-one of said chapter, all relating to increasing thresholds before small businesses and independent contractors must file monthly or quarterly returns under the consumers sales and service tax, use tax and employer withholding tax and pay taxes due with those returns.

Be it enacted by the Legislature of West Virginia:

That sections nine-d and twenty, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections three-d, ten and eleven, article fifteen-a of said chapter be amended and reenacted; and that section seventy-four, article twenty-one of said chapter be amended and reenacted, all to read as follows:

Article

15. Consumers Sales and Service Tax.
15A. Use Tax.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-9d. Direct pay permits.
§11-15-9d. Direct pay permits.

(a) Notwithstanding any other provision of this article, the tax commissioner may, pursuant to rules promulgated by him or her in accordance with article three, chapter twenty-nine-a of this code, authorize a person that is a user, consumer, distributor or lessee to which sales or leases of tangible personal property are made or services provided, to pay any tax levied by this article or article fifteen-a of this chapter directly to the tax commissioner and waive the collection of the tax by that person’s vendor. No such authority shall be granted or exercised except upon application to the tax commissioner and after issuance by the tax commissioner of a direct pay permit. Each direct pay permit granted pursuant to this section is valid until surrendered by the holder or canceled for cause by the commissioner. The commissioner shall prescribe by rules promulgated in accordance with article three, chapter twenty-nine-a of this code, those activities which will cause cancellation of a direct pay permit issued pursuant to this section. Upon issuance of a direct pay permit, payment of the tax imposed or assertion of the exemptions allowed by this article or article fifteen-a of this chapter on sales and leases of tangible personal property and sales of taxable services from the vendors of the personal property or services shall be made directly to the tax commissioner by the permit holder.

(b) On or before the fifteenth day of each month, every permit holder shall make and file with the tax commissioner a consumers sales and use tax direct pay permit return for the preceding month in the form prescribed by the tax commissioner showing the total value of the tangible personal property used, the amount of taxable services purchased, the amount of consumers sales and use taxes due from the permit holder, which shall be paid to the tax commissioner with the return, and any other information as the tax commissioner considers necessary: Provided, That if the amount of consumers sales and
use taxes due averages less than two hundred fifty dollars per month, the tax commissioner may permit the filing of quarterly returns in lieu of monthly returns and the amount of tax shown on the returns to be due shall be remitted on or before the fifteenth day following the close of the calendar quarter; and if the amount due averages less than one hundred fifty dollars per calendar quarter, the tax commissioner may permit the filing of an annual direct pay permit return and the amount of tax shown on the return to be due shall be remitted on or before the last day of January each year: Provided, however, That the tax commissioner may, by nonemergency legislative rules promulgated pursuant to article three, chapter twenty-nine-a of this code, change the minimum amounts established in this subsection. The tax commissioner, upon written request by the permit holder, may grant a reasonable extension of time, upon such terms as the tax commissioner may require, for the making and filing of direct pay permit returns and paying the tax due. Interest on the tax shall be chargeable on every extended payment at the rate specified in section seventeen, article ten of this chapter.

(c) A permit issued pursuant to this section is valid until expiration of the taxpayers registration year under article twelve of this chapter. This permit is automatically renewed when the taxpayers business registration certificate is issued for the next succeeding fiscal year, unless the permit is surrendered by the holder or canceled for cause by the tax commissioner.

(d) Persons who hold a direct payment permit which has not been canceled are not required to pay the tax to the vendor as otherwise provided in this article or article fifteen-a of this chapter. They shall notify each vendor from whom tangible personal property is purchased or leased or from whom services are purchased of their direct payment permit number and that the tax is being paid directly to the tax commissioner. Upon receipt of the notice, the vendor is absolved from all duties and
liabilities imposed by this chapter for the collection and
remittance of the tax with respect to sales of tangible personal
property and sales of services to the permit holder. Vendors
who make sales upon which the tax is not collected by reason
of the provisions of this section shall maintain records in such
manner that the amount involved and identity of each purchaser
may be ascertained.

(e) Upon the expiration, cancellation or surrender of a
direct payment permit, the provisions of this chapter, without
regard to this section, will thereafter apply to the person who
previously held the permit, and that person shall promptly
notify in writing vendors from whom tangible personal property
or services are purchased or leased of the cancellation or
surrender. Upon receipt of the notice, the vendor is subject to
the provisions of this chapter, without regard to this section,
with respect to all sales, distributions, leases or storage of
tangible personal property, thereafter made to or for that person.

(f) The amendments to this section enacted in the year two
thousand are effective for tax years beginning on or after the
first day of January, two thousand one.


(a) When the total consumers sales and use tax remittance
for which a person is liable does not exceed an average monthly
amount over the taxable year of two hundred fifty dollars, he
may pay the tax and make a quarterly return on or before the
fifteenth day of the first month in the next succeeding quarter
in lieu of monthly returns: Provided, That the tax commissioner
may, by nonemergency legislative rules promulgated pursuant
to article three, chapter twenty-nine-a of this code, change the
minimum amount established in this subsection.

(b) When the total consumers sales and use tax remittance
for which a person is liable does not in the aggregate exceed six
hundred dollars for the taxable year, he or she may pay the tax and make an annual return on or before the fifteenth day of the first month next succeeding the end of his taxable year: Provided, That the tax commissioner may, by nonemergency legislative rules promulgated pursuant to article three, chapter twenty-nine-a of this code, change the minimum amount established in this subsection.

(c) The amendments to this section enacted in the year two thousand are effective for tax years beginning on or after the first day of January, two thousand one.

ARTICLE 15A. USE TAX.

§11-15A-3d. Direct pay permits.

§11-15A-10. Payment to tax commissioner.


§11-15A-3d. Direct pay permits.

(a) Notwithstanding any other provision of this article, the tax commissioner may, pursuant to rules promulgated by him or her in accordance with article three, chapter twenty-nine-a of this code, authorize a person (as defined in section two of article fifteen) that is a user, consumer, distributor or lessee to which sales or leases of tangible personal property are made or services provided to pay any tax levied by this article or article fifteen of this chapter directly to the tax commissioner and waive the collection of the tax by that person's vendor. This authority is not to be granted or exercised except upon application to the tax commissioner and after issuance by the tax commissioner of a direct pay permit. Each direct pay permit granted pursuant to this section shall continue to be valid until surrendered by the holder or canceled for cause by the commissioner. The commissioner shall prescribe by rules promulgated in accordance with article three, chapter twenty-nine-a of this code, those activities which will cause cancellation of a direct pay permit issued pursuant to this section. Upon issuance of the
direct pay permit, payment of the tax imposed or assertion of
the exemptions allowed by this article or article fifteen of this
chapter on sales and leases of tangible personal property and
sales of taxable services from the vendors thereof shall be made
directly to the tax commissioner by the permit holder.

(b) On or before the fifteenth day of each month, every
permit holder shall make and file with the tax commissioner a
consumers sales and use tax direct pay permit return for the
preceding month in the form prescribed by the tax commis-
sioner showing the total value of the tangible personal property
so used, the amount of taxable services purchased, the amount
of tax due from the permit holder, which amount shall be paid
to the tax commissioner with the return, and any other informa-
tion the tax commissioner deems necessary: Provided, That if
the amount of consumers sales and use taxes due averages less
than two hundred fifty dollars per month, the tax commissioner
may permit the filing of quarterly returns in lieu of monthly
returns and the amount of tax shown thereon to be due shall be
remitted on or before the fifteenth day following the close of
the calendar quarter; and if the amount due averages less than
one hundred fifty dollars per calendar quarter, the tax commis-
sioner may permit the filing of an annual direct pay permit
return and the amount of tax shown thereon to be due are to be
remitted on or before the last day of January each year: Pro-
vided, however, That the tax commissioner may, by
nonemergency legislative rules promulgated pursuant to article
three, chapter twenty-nine-a of this code, change the minimum
amounts established in this subsection. The tax commissioner,
upon written request filed by the permit holder before the due
date of the return, may grant a reasonable extension of time,
upon the terms the tax commissioner may require, for the
making and filing of direct pay permit returns and paying the
tax due. Interest on the tax shall be chargeable on every
extended payment at the rate specified in section seventeen,
(c) A permit issued pursuant to this section is to be valid until expiration of the taxpayer’s registration year under article twelve of this chapter. This permit is automatically renewed when the taxpayer’s business registration certificate is issued for the next succeeding fiscal year, unless the permit is surrendered by the holder or canceled for cause by the tax commissioner.

(d) Persons who hold a direct payment permit which has not been canceled are not required to pay the tax to the vendor as otherwise provided in this article or article fifteen of this chapter. These persons shall notify each vendor from whom tangible personal property is purchased or leased or from whom services are purchased of their direct payment permit number and that the tax is being paid directly to the tax commissioner. Upon receipt of the notice, the vendor is absolved from all duties and liabilities imposed by this chapter for the collection and remittance of the tax with respect to sales, distributions, leases or storage of tangible personal property and sales of services to the permit holder. Vendors who make sales upon which the tax is not collected by reason of the provisions of this section shall maintain records in a manner by which the amount involved and identity of each purchaser may be ascertained.

(e) Upon the expiration, cancellation or surrender of a direct payment permit, the provisions of this chapter, without regard to this section, shall thereafter apply to the person who previously held the permit, and the person shall promptly notify in writing vendors from whom tangible personal property or services are purchased of the cancellation or surrender. Upon receipt of the notice, the vendor is subject to the provisions of this chapter, without regard to this section, with respect to all sales of tangible personal property or taxable services, thereafter made to or for the person.
(f) The amendments to this section enacted in the year two thousand are effective for tax years beginning on or after the first day of January, two thousand one.

§11-15A-10. Payment to tax commissioner.

Each retailer required or authorized, pursuant to sections six or seven, to collect the tax herein imposed, is required to pay to the tax commissioner the amount of the tax on or before the fifteenth day of the month next succeeding each quarterly period. At that time, each retailer shall file with the tax commissioner a return for the preceding quarterly period in the form prescribed by the tax commissioner showing the sales price of any or all tangible personal property sold by the retailer during the preceding quarterly period, the use of which is subject to the tax imposed by this article, and any other information the tax commissioner may deem necessary for the proper administration of this article. The return shall be accompanied by a remittance of the amount of the tax, for the period covered by the return: Provided, That where the tangible personal property is sold under a conditional sales contract, or under any other form of sale wherein the payment of the principal sum, or a part of the sum is extended over a period longer than sixty days from the date of the sale, the retailer may collect and remit each quarterly period that portion of the tax equal to six percent of that portion of the purchase price actually received during the quarterly period. The tax commissioner, if he or she deems it necessary in order to ensure payment to the state of the amount of the tax, may in any or all cases require returns and payments of the amount to be made for other than quarterly periods. The tax commissioner may, upon request and a proper showing of the necessity to do so, grant an extension of time not to exceed thirty days for making any return and payment. Returns shall be signed by the retailer or his or her duly authorized agent, and must be certified by him or her to be correct.

(a) Any person who uses any tangible personal property upon which the tax herein imposed has not been paid either to a retailer or direct to the tax commissioner is liable for the amount of the nonpayment, and persons required by law to hold a West Virginia business registration certificate shall on or before the fifteenth day of the month next succeeding each quarterly period pay the tax herein imposed upon all the property used by him or her during the preceding quarterly period and accompanied by returns the tax commissioner prescribes: Provided, That if the aggregate annual tax liability of any person under this article is six hundred dollars or less, the person shall, in lieu of the quarterly payment and filing, pay the tax on or before the fifteenth day of the first month next succeeding the end of his or her taxable year, and shall file the annual return as may be prescribed by the tax commissioner. The tax commissioner may, by nonemergency legislative rules promulgated pursuant to article three, chapter twenty-nine-a of this code, change the foregoing minimum amounts.

(b) Any individual who is not required by law to hold a West Virginia business registration certificate, who uses any tangible personal property or taxable service upon which the West Virginia use tax has not been paid either to a retailer or directly to the tax commissioner is liable for the West Virginia use tax upon property or taxable services used by him or her during the taxpayer’s federal taxable year on or before the fifteenth day of April of the taxpayer’s next succeeding federal tax year, and shall file the annual return therewith as the tax commissioner may authorize or require.
(c) All of the provisions of section ten with reference to quarterly or annual returns and payments are applicable to the returns and payments required under this section.

(d) The amendments to this section enacted in the year two thousand are effective for tax years beginning on or after the first day of January, two thousand one.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-74. Employer's return and payment of withheld taxes.

(a) General.—Every employer required to deduct and withhold tax under this article shall, for each calendar quarter, on or before the last day of the month following the close of such calendar quarter, file a withholding return as prescribed by the tax commissioner and pay over to the tax commissioner the taxes so required to be deducted and withheld. Where the average quarterly amount so deducted and withheld by any employer is less than one hundred fifty dollars and the aggregate for the calendar year can reasonably be expected to be less than six hundred dollars, the tax commissioner may by regulation permit an employer to file an annual return and pay over to the tax commissioner the taxes deducted and withheld on or before the last day of the month following the close of the calendar year: Provided, That the tax commissioner may, by nonemergency legislative rules promulgated pursuant to article three, chapter twenty-nine-a of this code, change the minimum amounts established by this subsection. The tax commissioner may, if he or she believes such action necessary for the protection of the revenues, require any employer to make the return and pay to him or her the tax deducted and withheld at any time, or from time to time.

(b) Monthly returns and payments of withheld tax on and after the first day of January, two thousand one. — Notwithstanding the provisions of subsection (a), on and after the first
day of January, two thousand one, every employer required to
deduct and withhold tax under this article shall, for each of the
first eleven months of the calendar year, on or before the
twentieth day of the succeeding month and for the last calendar
month of the year, on or before the last day of the succeeding
month, file a withholding return as prescribed by the tax
commissioner and pay over to the tax commissioner the taxes
so required to be deducted and withheld, if such withheld taxes
aggregate two hundred fifty dollars or more for the month;
except any employer with respect to whom the tax commis-
sioner may have by regulation provided otherwise in acord-
dance with the provisions of subsection (a) of this section.

(c) Annual returns and payments of withheld tax of certain
domestic and household employees. — Employers of domestic
and household employees whose withholdings of federal
income tax are annually paid and reported by the employer
pursuant to the filing of Schedule H of federal form 1040,
1040A, 1040NR, 1040NR-EZ, 1040SS or 1041 may, on or
before the thirty-first day of January next succeeding the end of
the calendar year for which withholdings are deducted and
withheld, file an annual withholding return with the tax
commissioner and annually remit to the tax commissioner West
Virginia personal income taxes deducted and withheld for the
employees. The tax commissioner may promulgate legislative
or other rules pursuant to article three, chapter twenty-nine-a of
this code for implementation of this subsection.

(d) Deposit in trust for tax commissioner. — Whenever any
employer fails to collect, truthfully account for, or pay over the
tax, or to make returns of the tax as required in this section, the
tax commissioner may serve a notice requiring the employer to
collect the taxes which become collectible after service of the
notice, to deposit the taxes in a bank approved by the tax
commissioner, in a separate account, in trust for and payable to
the tax commissioner, and to keep the amount of the tax in the
(e) **Accelerated payment.**

(1) Notwithstanding the provisions of subsections (a) and (b) of this section, for calendar years beginning after the thirty-first day of December, one thousand nine hundred ninety, every employer required to deduct and withhold tax whose average payment per calendar month for the preceding calendar year under subsection (b) of this section exceeded one hundred thousand dollars shall remit the tax attributable to the first fifteen days of June each year on or before the twenty-third day of June.

(2) For purposes of complying with subdivision (1) of this subsection (e), the employer shall remit an amount equal to the withholding tax due under this article on employee compensation subject to withholding tax payable or paid to employees for the first fifteen days of June or, at the employer’s election, the employer may remit an amount equal to fifty percent of the employer’s liability for withholding tax under this article on compensation payable or paid to employees for the preceding month of May.

(3) For an employer which has not been in business for a full calendar year, the total amount the employer was required to deduct and withhold under subsection (b) of this section for the prior calendar year shall be divided by the number of months, including fractions of a month, that it was in business during the prior calendar year, and if that amount exceeds one hundred thousand dollars, the employer shall remit the tax attributable to the first fifteen days of June each year on or before the twenty-third day of June, as provided in subdivision (2) of this subsection (e).
(4) When an employer required to make an advanced payment of withholding tax under subdivision (1) of this subsection (e) makes out its return for the month of June, which is due on the twentieth day of July, that employer may claim as a credit against its liability under this article for tax on employee compensation paid or payable for employee services rendered during the month of June the amount of the advanced payment of tax made under subdivision (1) of this subsection (e).

(f) The amendments to this section enacted in the year two thousand are effective for tax years beginning on or after the first day of January, two thousand one.

CHAPTER 261

(H. B. 4639 — By Delegates Rowe, Manuel, Doyle, Pino, Wills, Mahan and Webb)

[Passed March 7, 2000; in effect July 1, 2000. Approved by the Governor.]
ARTICLE 21. PERSONAL INCOME TAX.

§11-21-8g. Credit for qualified rehabilitated residential building investment.

(a) A credit against the tax imposed by the provisions of this article is allowed for residential certified historic structures. The credit is equal to twenty percent of eligible rehabilitation expenses in the rehabilitation of a certified historic structure. The credit is available for residential certified historic structures located in this state that are reviewed by the West Virginia division of culture and history and are determined to be listed on the national register of historic places either individually or as a contributing building within a historical district that is listed on the national register of historic places.

(b)(1) "Certified historic structure" means any building located in this state that is determined to be listed individually in the national register of historic places or located in a registered historic district, during the review by the West Virginia division of culture and history.

(2) "Certified rehabilitation" means any rehabilitation of a certified historic structure that is reviewed by the West Virginia division of culture and history, and is determined by the division of culture and history to be consistent with the historic character of the property and, where applicable, the district in which it is located.

(3) "Eligible rehabilitation expenses" means expenses incurred in the material rehabilitation of a certified historic structure and added to the property’s basis for income tax purposes.

(4) "Historic district" means a group of buildings, structures or sites that taken together make up a coherent whole with similar historic or architectural meaning that is listed in the national register of historic places.
(5) "Historic preservation application" means application forms published by the national park service, United States department of the interior, Parts 1, 2 and 3, Form No. I-168, or its successor, or comparable application forms prepared by the division of culture and history.

(6) "Material rehabilitation" means improvements, repairs, alterations or additions consistent with the "secretary of the interior's standards for rehabilitation," the actual cost of which amounts to at least twenty percent of the assessed value of a certified historic structure for ad valorem real estate tax purposes for the year before such rehabilitation expenses were incurred, exclusive of the assessed value of the land.

(7) "Residential certified historic structure" means any certified historic structure that is:

(A) Classified as Class II property for levy purposes pursuant to section five, article eight, chapter eleven of this code for the year in which the rehabilitation expenses are incurred; or

(B) Not classified as Class II property for levy purposes for the year in which the rehabilitation expenses are incurred but will satisfy the requirements for classification as Class II for real property assessment purposes pursuant to section five, article eight, chapter eleven of this code as of the first day of July of the year following the year in which the rehabilitation expenses are incurred.

(8) "Secretary of the interior standards" means standards and guidelines adopted and published by the national park service, United States department of the interior, for rehabilitation of historic properties.

(9) "State historic preservation officer" means the state official designated by the governor pursuant to provisions in the
national historic preservation act of 1966, as amended and further defined in section six, article one, chapter twenty-nine of this code.

(c)(1) Application and processing procedures for provisions of this section shall be the same or substantially similar as any required under provisions of 36 C.F.R., Part 67, and to the extent applicable, 26 C.F.R., Part 1. Obtaining historic preservation certification by proper application automatically qualifies the applicant to be considered for tax credits under this section.

(2) The state historic preservation officer's role in the application procedure shall be identical, or substantially similar, to that in 36 C.F.R., Part 67 and 26 C.F.R., Part 1, to the extent applicable.

(d) All standards including the secretary of the interior standards and provisions in 36 C.F.R., Part 67 and 26 C.F.R., Part 1 that apply to tax credits available from the United States government apply to this section, except that the property eligible for the tax credit under this section may not be income producing property or property for which depreciation is allowed under 26 U.S.C. §168.

(e) If the amount of the credit for qualified rehabilitated residential building investment exceeds the taxpayer's tax liability for the taxable year to which the credit applies, the amount that exceeds the tax liability for the taxable year may be carried over for credits against the income taxes of the taxpayer in each of the ensuing five tax years or until the full credit is used, whichever occurs first. In no event may the amount of the credit taken in a taxable year exceed the tax liability due for the taxable year.

(f) The tax commissioner shall require disclosure of information regarding credits granted pursuant to this section in
accordance with the provisions of section five-s, article ten of
this chapter. The commissioner of the West Virginia division of
culture and history may establish by rule the requirements to
implement the credit for qualified rehabilitated residential
building investment, including reasonable fees to defray the
necessary expenses of administration of the credit.

(g) The credit authorized by this section is available for tax
years beginning after the thirty-first day of December, one
thousand nine hundred ninety-nine.

CHAPTER 262

(S. B. 143 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed February 7, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article twenty-one,
chapter eleven of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to updating the meaning
of certain terms used in the West Virginia personal income tax act
by bringing them into conformity with their meanings for federal
income tax purposes; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.


(a) Any term used in this article has the same meaning as
when used in a comparable context in the laws of the United
States relating to income taxes, unless a different meaning is
clearly required. Any reference in this article to the laws of the
United States means the provisions of the Internal Revenue
Code of 1986, as amended, and any other provisions of the laws
of the United States that relate to the determination of income
for federal income tax purposes. All amendments made to the
laws of the United States after the thirty-first day of December,
one thousand nine hundred ninety-eight, but prior to the first
day of January, two thousand, shall be given effect in determin-
ing the taxes imposed by this article to the same extent those
changes are allowed for federal income tax purposes, whether
the changes are retroactive or prospective, but no amendment
to the laws of the United States made on or after the first day of
January, two thousand, shall be given any effect.

(b) Medical savings accounts. — The term “taxable trust”
does not include a medical savings account established pursuant
to section twenty, article fifteen, chapter thirty-three of this
code or section fifteen, article sixteen of said chapter. Employer
contributions to a medical savings account established pursuant
to said sections, are not “wages” for purposes of withholding
under section seventy-one of this article.

(c) Surtax. — The term “surtax” means the twenty percent
additional tax imposed on taxable withdrawals from a medical
savings account under section twenty, article fifteen, chapter
thirty-three of this code, and the twenty percent additional tax
imposed on taxable withdrawals from a medical savings
account under section fifteen, article sixteen of said chapter,
which are collected by the tax commissioner as tax collected
under this article.

(d) Effective date. — The amendments to this section
enacted in the year two thousand, are retroactive to the extent
allowable under federal income tax law. With respect to taxable
years that begin prior to the first day of January, one thousand
nine hundred ninety-nine, the law in effect for each of those
years shall be fully preserved as to that year, except as provided
in this section.
AN ACT to amend and reenact section twelve, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to setting forth a formula to exempt military retirement from the personal income tax; providing that the formula applies to up to thirty thousand dollars of military retirement income; setting forth effective date and applicable time periods; setting forth the types of military income which may be exempted; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12. West Virginia adjusted gross income of resident individual.

1 (a) General. — The West Virginia adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year with the modifications specified in this section.

5 (b) Modifications increasing federal adjusted gross income. — There shall be added to federal adjusted gross income unless already included therein the following items:
(1) Interest income on obligations of any state other than this state or of a political subdivision of any other state unless created by compact or agreement to which this state is a party;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes;

(3) Any deduction allowed when determining federal adjusted gross income for federal income tax purposes for the taxable year that is not allowed as a deduction under this article for the taxable year;

(4) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is exempt from tax under this article, to the extent deductible in determining federal adjusted gross income;

(5) Interest on a depository institution tax-exempt savings certificate which is allowed as an exclusion from federal gross income under Section 128 of the Internal Revenue Code, for the federal taxable year;

(6) The amount of a lump sum distribution for which the taxpayer has elected under Section 402(e) of the Internal Revenue Code of 1986, as amended, to be separately taxed for federal income tax purposes; and

(7) Amounts withdrawn from a medical savings account established by or for an individual under section twenty, article fifteen or section fifteen, article sixteen, both of chapter thirty-three of this code, that are used for a purpose other than payment of medical expenses, as defined in those sections.

(c) Modifications reducing federal adjusted gross income. — There shall be subtracted from federal adjusted gross income to the extent included therein:
(1) Interest income on obligations of the United States and its possessions to the extent includable in gross income for federal income tax purposes;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States or of the state of West Virginia to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States or of the state of West Virginia, including federal interest or dividends paid to shareholders of a regulated investment company, under Section 852 of the Internal Revenue Code for taxable years ending after the thirtieth day of June, one thousand nine hundred eighty-seven;

(3) Any amount included in federal adjusted gross income for federal income tax purposes for the taxable year that is not included in federal adjusted gross income under this article for the taxable year;

(4) The amount of any refund or credit for overpayment of income taxes imposed by this state, or any other taxing jurisdiction, to the extent properly included in gross income for federal income tax purposes;

(5) Annuities, retirement allowances, returns of contributions and any other benefit received under the West Virginia public employees retirement system, the West Virginia state teachers retirement system and all forms of military retirement, including regular armed forces, reserves and national guard, including any survivorship annuities derived therefrom, to the extent includable in gross income for federal income tax purposes: Provided, That notwithstanding any provisions in this code to the contrary this modification shall be limited to the first two thousand dollars of benefits received under the West Virginia public employees retirement system, the West Virginia state teachers retirement system and, including any survivorship annuities derived therefrom, to the extent includable in gross income for federal income tax purposes for taxable years
(6) Retirement income received in the form of pensions and
annuities after the thirty-first day of December, one thousand
nine hundred seventy-nine, under any West Virginia police,
West Virginia firemen's retirement system or the West Virginia
state police death, disability and retirement fund, the West
Virginia state police retirement system, or the West Virginia
deputy sheriff retirement system, including any survivorship
annuities derived any of these programs, to the extent
includable in gross income for federal income tax purposes;

(7) An amount equal to two percent multiplied by the
number of years of active duty in the armed forces of the United
States of America with the product thereof multiplied by the
first thirty thousand dollars of military retirement income,
including retirement income from the regular armed forces,
reserves and national guard paid by the United States or by this
state after the thirty-first day of December, two thousand
including any survivorship annuities, to the extent included in
gross income for federal income tax purposes for the taxable
year: Provided, That in the event that any of the provisions of
this subdivision are found by a court of competent jurisdiction
to violate either the constitution of this state or of the United
States, or is held to be extended to persons other than specified
in this subdivision, this subdivision shall become null and void
by operation of law.

(8) Federal adjusted gross income in the amount of eight
thousand dollars received from any source after the thirty-first
day of December, one thousand nine hundred eighty-six, by any person who has attained the age of sixty-five on or before the last day of the taxable year, or by any person certified by proper authority as permanently and totally disabled, regardless of age, on or before the last day of the taxable year, to the extent includable in federal adjusted gross income for federal tax purposes: Provided, That if a person has a medical certification from a prior year and he is still permanently and totally disabled, a copy of the original certificate is acceptable as proof of disability. A copy of the form filed for the federal disability income tax exclusion is acceptable: Provided, however, That:

(i) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this subsection is eight thousand dollars per person or more, no deduction shall be allowed under this subdivision; and

(ii) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this subsection is less than eight thousand dollars per person, the total modification allowed under this subdivision for all gross income received by that person shall be limited to the difference between eight thousand dollars and the sum of modifications under subdivisions (1), (2), (5), (6) and (7) of this subsection;

(9) Federal adjusted gross income in the amount of eight thousand dollars received from any source after the thirty-first day of December, one thousand nine hundred eighty-six, by the surviving spouse of any person who had attained the age of sixty-five or who had been certified as permanently and totally disabled, to the extent includable in federal adjusted gross income for federal tax purposes: Provided, That:

(i) Where the total modification under subdivisions (1), (2), (5), (6), (7) and (8) of this subsection is eight thousand dollars or more, no deduction shall be allowed under this subdivision; and
(ii) Where the total modification under subdivisions (1), (2), (5), (6), (7) and (8) of this subsection is less than eight thousand dollars per person, the total modification allowed under this subdivision for all gross income received by that person shall be limited to the difference between eight thousand dollars and the sum of subdivisions (1), (2), (5), (6), (7) and (8) of this subsection;

(10) Contributions from any source to a medical savings account established by or for the individual pursuant to section twenty, article fifteen or section fifteen, article sixteen, chapter thirty-three of this code, plus interest earned on the account, to the extent includable in federal adjusted gross income for federal tax purposes: Provided, That the amount subtracted pursuant to this subdivision for any one taxable year may not exceed two thousand dollars plus interest earned on the account. For married individuals filing a joint return, the maximum deduction is computed separately for each individual; and

(11) Any other income which this state is prohibited from taxing under the laws of the United States.

(d) Modification for West Virginia fiduciary adjustment. — There shall be added to or subtracted from federal adjusted gross income, as the case may be, the taxpayer’s share, as beneficiary of an estate or trust, of the West Virginia fiduciary adjustment determined under section nineteen of this article.

(e) Partners and S corporation shareholders. — The amounts of modifications required to be made under this section by a partner or an S corporation shareholder, which relate to items of income, gain, loss or deduction of a partnership or an S corporation, shall be determined under section seventeen of this article.

(f) Husband and wife. — If husband and wife determine their federal income tax on a joint return but determine their West Virginia income taxes separately, they shall determine
their West Virginia adjusted gross incomes separately as if their federal adjusted gross incomes had been determined separately.

(g) Effective date. — Changes in the language of this section enacted in the year two thousand shall apply to taxable years beginning after the thirty-first day of December, two thousand.

CHAPTER 264

(H. B. 4354 — By Delegates Cann, Michael, Campbell, Kominar, Hall, Fletcher and Houston)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twelve-c, relating to deduction of premium paid for long-term care insurance from federal adjusted gross income.

Be it enacted by the Legislature of West Virginia:

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

PART I. GENERAL.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12c. Deduction for long-term care insurance.

For taxable years beginning on and after the first day of January, two thousand, in addition to amounts authorized to be subtracted from federal adjusted gross income pursuant to subsection (c), section twelve of this article, any payment during the taxable year for premiums for a long-term care
insurance policy as defined in section four, article fifteen-a, chapter thirty-three of this code that offers coverage to either the taxpayer, the taxpayer’s spouse, parent or a dependent as defined in section 152 of the Internal Revenue Code of 1986, as amended, is an authorized modification reducing federal adjusted gross income, but only to the extent the amount is not allowable as a deduction when arriving at the taxpayer’s federal adjusted gross income for the taxable year in which the payment is made.

CHAPTER 265

(S. B. 144 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed February 7, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating the meaning of certain terms used in the West Virginia corporation net income tax act by bringing them into conformity with their meanings for federal income tax purposes; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

(a) Any term used in this article has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required by the context or by definition in
this article. Any reference in this article to the laws of the United States means the provisions of the Internal Revenue Code of 1986, as amended, and any other provisions of the laws of the United States that relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States after the thirty-first day of December, one thousand nine hundred ninety-eight, but prior to the first day of January, two thousand, shall be given effect in determining the taxes imposed by this article to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective, but no amendment to the laws of the United States made on or after the first day of January, two thousand, shall be given any effect.

(b) The term "Internal Revenue Code of 1986" means the Internal Revenue Code of the United States enacted by the "Federal Tax Reform Act of 1986" and includes the provisions of law formerly known as the Internal Revenue Code of 1954, as amended, and in effect when the "Federal Tax Reform Act of 1986" was enacted, that were not amended or repealed by the "Federal Tax Reform Act of 1986". Except when inappropriate, any references in any law, executive order or other document:

(1) To the Internal Revenue Code of 1954 includes reference to the Internal Revenue Code of 1986; and

(2) To the Internal Revenue Code of 1986 shall include a reference to the provisions of law formerly known as the Internal Revenue Code of 1954.

(c) Effective date. — The amendments to this section enacted in the year two thousand, are retroactive to the extent allowable under federal income tax law. With respect to taxable years that begin prior to the first day of January, one thousand nine hundred ninety-nine, the law in effect for each of those years shall be fully preserved as to that year, except as provided in this section.
AN ACT to amend and reenact sections two, five, eighteen, twenty-seven, forty-five, forty-six and forty-eight, article three, chapter eleven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to real property tax liens sold by sheriff for delinquent ad valorem taxes; hours of sale; forfeiture of purchaser's rights because of the expiration of the tax lien; limitation on the time to apply for quitclaim deed; publication of notice of auction; and auction without additional advertising.

Be it enacted by the Legislature of West Virginia:

That sections two, five, eighteen, twenty-seven, forty-five, forty-six and forty-eight, article three, chapter eleven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. SALE OF TAX LIENS AND NONENTERED, ESCHEATED AND WASTE AND UNAPPROPRIATED LANDS.

§11A-3-2. Second publication of list of delinquent real estate; notice.

§11A-3-5. Sale by sheriff; immunity; penalty; mandamus.

§11A-3-18. Limitations on tax certificates.

§11A-3-27. Deed to purchaser; record.

§11A-3-45. Deputy commissioner to hold annual auction.

§11A-3-46. Publication of notice of auction.

§11A-3-48. Unsold lands subject to sale without auction or additional advertising.

§11A-3-2. Second publication of list of delinquent real estate; notice.

(a) On or before the tenth day of September of each year, the sheriff shall prepare a second list of delinquent lands, which
shall include all real estate in his county remaining delinquent
as of the first day of September, together with a notice of sale,
in form or effect as follows:

Notice is hereby given that tax liens for the following
described tracts or lots of land or undivided interests therein in
the County of ____________ which are delinquent for the
nonpayment of taxes for the year (or years) 19____, will be
offered for sale by the undersigned sheriff (or collector) at
public auction at the front door of the courthouse of the county,
between the hours of nine in the morning and four in the
afternoon, on the ___ day of ______________, 19__.

Tax liens on each unredeemed tract or lot, or each unre-
deeded part thereof or undivided interest therein, will be sold
at public auction to the highest bidder in an amount which shall
not be less than the taxes, interest and charges which shall be
due thereon to the date of sale, as set forth in the following
table:

<table>
<thead>
<tr>
<th>Name of person charged with taxes</th>
<th>Quantity of land</th>
<th>Local description</th>
<th>Total amount of taxes, interest and charges due to date of sale</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Any of the aforesaid tracts or lots, or part thereof or an
undivided interest therein, may be redeemed by the payment to
the undersigned sheriff (or collector) before sale, of the total
amount of taxes, interest and charges due thereon up to the date
of redemption.

Given under my hand this __________ day of
_____________________, 19____.

__________________________
Sheriff (or collector).
The sheriff shall publish the list and notice prior to the sale date fixed in the notice as a Class III-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county.

(b) In addition to such publication, no less than thirty days prior to the sale the sheriff shall send a notice of the delinquency and the date of sale by certified mail: (1) To the last known address of each person listed in the land books whose taxes are delinquent; (2) to each person having a lien on real property upon which the taxes are due as disclosed by a statement filed with the sheriff pursuant to the provisions of section three of this article; (3) to each other person with an interest in the property or with a fiduciary relationship to a person with an interest in the property who has in writing delivered to the sheriff on a form prescribed by the tax commissioner a request for such notice of delinquency; and (4) in the case of property which includes a mineral interest but does not include an interest in the surface other than an interest for the purpose of developing the minerals, to each person who has in writing delivered to the sheriff, on a form prescribed by the tax commissioner, a request for such notice which identifies the person as an owner of an interest in the surface of real property that is included in the boundaries of such property: Provided, That in a case where one owner owns more than one parcel of real property upon which taxes are delinquent, the sheriff may, at his option, mail separate notices to the owner and each lienholder for each parcel or may prepare and mail to the owner and each lienholder a single notice which pertains to all such delinquent parcels. If the sheriff elects to mail only one notice, that notice shall set forth a legally sufficient description of all parcels of property on which taxes are delinquent. In no event shall failure to receive the mailed notice by the landowner or lienholder affect the validity of the title of the property con-
veyed if it is conveyed pursuant to section twenty-seven or fifty-nine of this article.

(c) (1) To cover the cost of preparing and publishing the second delinquent list, a charge of twelve dollars and fifty cents shall be added to the taxes, interest and charges already due on each item and all such charges shall be stated in the list as a part of the total amount due.

(2) To cover the cost of preparing and mailing notice to the landowner, lienholder or any other person entitled thereto pursuant to this section, a charge of five dollars per addressee shall be added to the taxes, interest and charges already due on each item and all such charges shall be stated in the list as a part of the total amount due.

(d) Any person whose taxes were delinquent on the first day of September may have his or her name removed from the delinquent list prior to the time the same is delivered to the newspapers for publication by paying to the sheriff the full amount of taxes and costs owed by the person at the date of such redemption. In such case, the sheriff shall include but three dollars of the costs provided in this section in making such redemption. Costs collected by the sheriff hereunder which are not expended for publication and mailing shall be paid into the general county fund.

§11A-3-5. Sale by sheriff; immunity; penalty; mandamus.

(a) The tax lien on each unredeemed tract or lot, or each unredeemed part thereof or undivided interest therein shall be sold by the sheriff, in the same order as set forth in the list and notice prescribed in section two of this article, at public auction to the highest bidder, between the hours of nine in the morning and four in the afternoon on any business working day after the fourteenth day of October and before the twenty-third day of November: Provided, That no tax lien for such unredeemed
tract or lot or undivided interest therein shall be sold upon any bid or for any sum less than the total amount of taxes, interest and charges then due: Provided, however, That at any such sale, the tax lien for each unredeemed tract or lot, or undivided interest therein, shall be offered for sale and sold for the entirety of such tract or lot or undivided interest therein as the same is described and constituted as a unit or entity in the list and notice prescribed in section two of this article. If the sale shall not be completed on the day designated in the notice for the holding of such sale, it shall be continued from day to day between the same hours until disposition shall have been made of all the land. The payment for any tax lien purchased at a sale shall be made by check or money order payable to the sheriff of the county and delivered before the close of business on the day of the sale.

(b) Each sheriff is immune from liability if a loss or claim results from the sale of a tax lien conducted pursuant to the provisions of this article or from any subsequent conveyance of the property to which the lien attaches: Provided, That where a sheriff fails or refuses to sell said tax lien pursuant to the provisions of this article for reasons other than those provided by section seven of this article, the sheriff may be compelled by mandamus to sell the same upon the petition of the auditor or any taxpayer of the county in a court of competent jurisdiction.

§11A-3-18. Limitations on tax certificates.

(a) No lien upon real property evidenced by a tax certificate of sale issued by a sheriff on account of any delinquent property taxes may remain a lien thereon for a period longer than eighteen months after the original issuance thereof.

(b) All rights of a purchaser shall be deemed forfeited and expired and no tax deed is to be issued on any tax sale evidenced by a tax certificate of sale where the certificate has ceased to be a lien pursuant to the provisions of this section and
application for the tax deed, pursuant to the provisions of section twenty-seven of this article, is not pending at the time of the expiration of the limitation period provided for in this section.

(c) Whenever a lien evidenced by a tax certificate of sale has expired by reason of the provisions of this section, the county clerk shall immediately issue and record a certificate of cancellation describing the real estate included in the certificate of purchase or tax certificate and giving the date of cancellation and the clerk shall also make proper entries in his or her records. The clerk shall also present a copy of every such certificate of cancellation to the sheriff who shall enter the same in the sheriff’s records and the certificate and the record are prima facie evidence of the cancellation of the certificate of sale and of the release of the lien of the certificate on the lands therein described. Failure to record the certificate of cancellation does not extend the lien evidenced by the certificate of sale. The sheriff and county clerk are not entitled to any fees for the issuing of the certificate of cancellation nor for the entries in their books made under the provisions of this subsection.

§11A-3-27. Deed to purchaser; record.

If the real estate described in the notice is not redeemed within the time specified therein, but in no event prior to the first day of April of the second year following the sheriff’s sale, the person entitled thereto shall thereafter, but prior to the expiration of the lien evidenced by a tax certificate of sale issued by a sheriff for such real estate as provided in section eighteen of this article, make and deliver to the clerk of the county commission subject to the provisions of section eighteen of this article, a quitclaim deed for the real estate in form or effect as follows:

This deed made this ________ day of ________, 19__, by and between ________________________, clerk of the
county commission of __________ County, 
West Virginia, (or by and between __________, a 
commissioner appointed by the Circuit Court of 
__________ County, West Virginia) grantor, and 
__________, purchaser, (or _____________, heir, 
devisee or assignee of _________________, purchaser), 
grantee, witnesseth, that:

Whereas, In pursuance of the statutes in such case made 
and provided, ______________, Sheriff of ___________ 
County, (or _____________, deputy for _____________, 
Sheriff of ____________ County), (or _____________, 
collector of ____________ County), did, in the month of 
__________, in the year 19____, sell the tax lien(s) on real 
estate, hereinafter mentioned and described, for the taxes 
delinquent thereon for the year (or years) 19____, and 
______________, (here insert name of purchaser) for the sum 
of $__________, that being the amount of purchase money 
paid to the sheriff, did become the purchaser of the tax lien(s) 
on such real estate (or on _______ acres, part of the tract or 
land, or on an undivided _____________ interest in such real 
estate) which was returned delinquent in the name of 
_______________; and

Whereas, The clerk of the county commission has caused 
the notice to redeem to be served on all persons required by law 
to be served therewith; and

Whereas, The tax lien(s) on the real estate so purchased has 
not been redeemed in the manner provided by law and the time 
for redemption set in such notice has expired;

Now, therefore, the grantor, for and in consideration of the 
premises and in pursuance of the statutes, doth grant unto 
______________, grantee, his heirs and assigns forever, the real 
estate on which the tax lien(s) so purchased existed, situate in
the county of ________________, bounded and described as follows: ____________________________

Witness the following signature: ________________________

Clerk of the County Commission of ________________

County.

Except when ordered to do so, as provided in section twenty-eight of this article, no clerk of the county commission may execute and deliver such a deed more than thirty days after the person entitled to the deed delivers the same and requests the execution thereof. Upon the clerk’s determination that the deed presented substantially complies with the requirements of this section, the clerk shall execute the deed and acknowledge the same, record the deed in the clerk’s office and deliver the original thereof to the purchaser.

For the execution of the deed and for all the recording required by this section, a fee of seven dollars and fifty cents and the recording expenses shall be charged, to be paid by the grantee upon delivery of the deed. The deed, when duly acknowledged or proven, shall be recorded by the clerk of the county commission in the deed book in the clerk’s office, together with assignment from the purchaser, if one was made, the notice to redeem, the return of service of the notice, the affidavit of publication, if the notice was served by publication, and any return receipts for notices sent by certified mail.

§11A-3-45. Deputy commissioner to hold annual auction.

(a) Each tract or lot certified to the deputy commissioner pursuant to the preceding section shall be sold by the deputy commissioner at public auction at the courthouse of the county to the highest bidder between the hours of nine in the morning and four in the afternoon on any business working day within one hundred twenty days after the auditor has certified the lands
to the deputy commissioner as required by the preceding section. The payment for any tract or lot purchased at a sale shall be made by check or money order payable to the sheriff of the county and delivered before the close of business on the day of sale. No part or interest in any tract or lot subject to such sale, or any part thereof of interest therein, that is less than the entirety of such unredeemed tract, lot or interest, as the same is described and constituted as a unit or entity in said list, shall be offered for sale or sold at such sale. If the sale shall not be completed on the first day of the sale, it shall be continued from day to day between the same hours until all the land shall have been offered for sale.

(b) A private, nonprofit, charitable corporation, incorporated in this state, which has been certified as a nonprofit corporation pursuant to the provisions of Section 501(c)(3) of the federal Internal Revenue Code, as amended, which has as its principal purpose the construction of housing or other public facilities and which notifies the deputy commissioner of an intention to bid and subsequently submits a bid that is not more than five percent lower than the highest bid submitted by any person or organization which is not a private, nonprofit, charitable corporation as defined in this subsection, shall be sold the property offered for sale by the deputy commissioner pursuant to the provisions of this section at the public auction as opposed to the highest bidder.

The nonprofit corporation referred to in this subsection does not include a business organized for profit, a labor union, a partisan political organization or an organization engaged in religious activities and it does not include any other group which does not have as its principal purpose the construction of housing or public facilities.

§11A-3-46. Publication of notice of auction.
Once a week for three consecutive weeks prior to the auction required in the preceding section, the deputy commissioner shall publish notice of the auction as a Class III-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county.

The notice shall be in form or effect as follows:

Notice is hereby given that the following described tracts or lots of land in the County of ____________, have been certified by the Auditor of the State of West Virginia to ____________, Deputy Commissioner of Delinquent and Nonentered Lands of said County, for sale at public auction. The lands will be offered for sale by the undersigned deputy commissioner at public auction in (specify location) the courthouse of ____ County between the hours of nine in the morning and four in the afternoon, on the ____ day of ____________, 19__. Each tract or lot as described below will be sold to the highest bidder. The payment for any tract or lot purchased at a sale shall be made by check or money order payable to the sheriff of the county and delivered before the close of business on the day of the sale. If any of said tracts or lots remain unsold following the auction, they will be subject to sale by the deputy commissioner without additional advertising or public auction. The deputy commissioner sale may include tracts or lots remaining unsold from a previous auction not required by law to be readvertised and described for this subsequent auction of those same tracts and lots. All sales are subject to the approval of the auditor of the state of West Virginia.

(here insert description of advertised lands to be sold)

Any of the aforesaid tracts or lots may be redeemed by any person entitled to pay the taxes thereon at any time prior to the
sale by payment to the deputy commissioner of the total amount
of taxes, interest and charges due thereon up to the date of
redemption. Lands listed above as escheated or waste and
unappropriated lands may not be redeemed.

Given under my hand this ______ day of _____________.
19_____.

______________________________ Deputy Commissioner of
Delinquent and Nonentered Lands of ______________________
County.

The description of lands required in the notice shall be in
the same form as the list certifying said lands to the deputy
commissioner for sale. If the deputy commissioner is required
to auction lands certified to him in any previous years, pursuant
to section forty-eight of this article, he shall include such lands
in the auction without further advertisement, with reference to
the year of certification and the item number of the tract or
interest.

To cover the cost of preparing and publishing the notice, a
charge of thirty dollars shall be added to the taxes, interest and
charges due on the delinquent and nonentered property.

§11A-3-48. Unsold lands subject to sale without auction or addi-
tional advertising.

If any of the lands which have been offered for sale at the
public auction provided in section forty-five of this article shall
remain unsold following such auction, or if the auditor refuses
to approve the sale pursuant to section fifty-one of this article,
the deputy commissioner may sell such lands at any time
subsequent to such auction, without any further public auction
or additional advertising of such land, to any party willing to
purchase such property. The price of such property shall be as
agreed upon by the deputy commissioner and purchaser, subject
to approval by the auditor as provided in section fifty-one of
this article.
AN ACT to amend and reenact section four-a, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter sixty of said code by adding thereto a new article, designated article nine, all relating to additional requirements for the sale of cigarettes and other tobacco products; requiring sellers of the same to be licensed; providing criminal penalties for failure to obtain a license; prohibiting certain types of sales; providing for restrictions with respect to distributors; providing for criminal penalties for committing prohibited acts; providing for civil administrative penalties; providing that certain acts shall constitute certain unfair or deceptive acts or practices; providing for seizure and forfeiture of contraband; providing for powers, duties, and authority of the state tax commissioner and alcohol beverage control commissioner with respect to the foregoing; and creating a private cause of action to enforce provisions of article.

Be it enacted by the Legislature of West Virginia:

That section four-a, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that chapter sixty of said code be amended by adding thereto a new article, designated article nine, all to read as follows:
CHAPTER 11. TAXATION.

Chapter

11. Taxation.

60. State Control of Alcoholic Liquors.

ARTICLE 12. BUSINESS REGISTRATION TAX.

§11-12-4a. Sellers of cigarettes, tobacco products or cigarette wrappers required to be licensed; business registration certificate is license; criminal penalties.

(a) For registration years beginning on or after the first day of July, two thousand, each person who sells cigarettes, or other tobacco products or cigarette wrappers at wholesale or retail shall apply for and receive a license to sell cigarettes or other tobacco products or cigarette wrappers. The cigarette license application shall be a part of the business registration certificate or the renewal application for a business registration certificate.

(b) The license shall be printed on the business registration certificate or certificates issued under the provisions of subsection (a), section four of this article.

(c) Any person or company who sells any cigarettes, or other tobacco products or cigarette wrappers at wholesale or retail after the first day of July, two thousand one, without obtaining the license specified in subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than two hundred fifty dollars.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 9. CIGARETTES PRODUCED FOR EXPORT; IMPORTED CIGARETTES.
§60-9-1. Definitions.

(a) As used in this article:

(1) "Package" means a pack, carton or container of any kind in which cigarettes are offered for sale, sold, or otherwise distributed, or intended for distribution, to consumers.

(2) "Importer" means "importer" as that term is defined in 26 U.S.C. 5702(1).

(3) "Person" means and includes any individual, firm, association, company, partnership, corporation, joint-stock company, club, agency, syndicate, municipal corporation or other political subdivision of this state, trust, receiver, trustee, fiduciary or conservator, and when used in connection with any penalties imposed by this article, means and includes officers, directors, trustees or members of any firm, copartnership, association, corporation, trust or any other unit acting as a group.

(4) "Retailer" means and includes every person in this state, other than a wholesaler or subjobber, as defined in section two, article seventeen, chapter eleven of this code, engaged in the selling of cigarettes at retail to a consumer or to any person for any purpose other than resale.

§60-9-2. Cigarettes produced for export — prohibitions.

(a) It is unlawful for any person:
(1) To sell or distribute to consumers in this state, to acquire, hold, own, possess or transport, for sale or distribution in this state, or to import, or cause to be imported, into this state for sale or distribution in this state:

(A) Any cigarettes the package of which:

(i) Bears any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed, or used in the United States, including, but not limited to, labels stating "for export only," "U.S. tax-exempt," "for use outside U.S." or similar wording; or

(ii) Does not comply with:

(I) All requirements imposed by or pursuant to federal law regarding warnings and other information on packages of cigarettes manufactured, packaged or imported for sale, distribution, or use in the United States, including, but not limited to, the precise warning labels specified in the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1333; and

(II) All federal trademark and copyright laws;

(B) Any cigarettes imported into the United States in violation of 26 U.S.C. 5754 or any other federal law or the implementing federal regulations;

(C) Any cigarettes that the person otherwise knows or has reason to know the manufacturer did not intend to be sold, distributed or used in the United States; or

(D) Any cigarettes for which there has not been submitted to the secretary of the United States department of health and human services, the list or lists of the ingredients added to tobacco in the manufacture of such cigarettes required by the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1355a;
(2) To alter the package of any cigarettes, prior to sale or
distribution to the ultimate consumer, so as to remove, conceal
or obscure:

(A) Any statement, label, stamp, sticker or notice described
in subparagraph (i), paragraph (A), subdivision (1), subsection
(a) of this section; or

(B) Any health warning that is not specified in, or does not
conform with the requirements of, the Federal Cigarette
Labeling and Advertising Act, 15 U.S.C. 1333; or

(3) To affix any stamp required pursuant to article seven-
eteen, chapter eleven of this code to the package of any ciga-
rettes described in subdivision (1), subsection (a) of this section
or altered in violation of subdivision (2), subsection (a) of this
section.

§60-9-3. Imported cigarettes — requirements.

On the first business day of each month, each person
authorized to affix the state tax stamp to cigarettes shall file
with the state tax commissioner, for all cigarettes imported into
the United States to which the person has affixed the tax stamp
in the preceding month, the following:

(1) A copy of the permit issued pursuant to the Internal
Revenue Code, 26 U.S.C. 5713, to the person importing the
cigarettes into the United States allowing such person to import
the cigarettes; and

(2) A copy of the customs form containing, with respect to
the cigarettes, the internal revenue tax information required by
the U.S. bureau of alcohol, tobacco and firearms; and

(3) A statement, signed by the person under penalty of
perjury, which shall be treated as confidential by the commis-
sioner and exempt from disclosure under the freedom of
information act, article one, chapter twenty-nine-b of this code, identifying the brand and brand styles of all the cigarettes, the quantity of each brand style of such cigarettes, the supplier of the cigarettes, and the person or person, if any, to whom the cigarettes have been conveyed for resale; and a separate statement signed by the individual under penalty of perjury, which shall not be treated as confidential or exempt from disclosure, separately identifying the brands and brand styles of the cigarettes; and

(4) A statement, signed by an officer of the manufacturer or importer under penalty of perjury, certifying that the manufacturer or importer has complied with:

(A) The package health warning and ingredient reporting requirements of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1333 and 1335a, with respect to the cigarettes; and

(B) The provisions of article nine-b, chapter sixteen of this code, including a statement indicating whether the manufacturer is, or is not, a participating tobacco manufacturer within the meaning of that statute.

§60-9-4. Criminal penalties.

Any person that commits any of the acts prohibited by section two of this article, either knowing or having reason to know he or she is doing so, or that fails to comply with any of the requirements of section three of this article, is guilty of a felony and, upon conviction thereof, shall be fined not more than five thousand dollars, or imprisoned in a state correctional facility not more than five years, or both fined and imprisoned.

§60-9-5. Administrative sanctions.

(a) The state tax commissioner may revoke or suspend the authorization to affix the tax stamp of any person for a violation
of this article or any legislative rule related to this article that is
promulgated by the commissioner pursuant to chapter twenty-
ine-a of this code and, in conjunction, the alcohol beverage
control commissioner may impose on the person a civil penalty
in an amount not to exceed the greater of five hundred percent
of the retail value of the cigarettes involved or five thousand
dollars, upon finding a violation by such person of this enact-
ment, or the rules promulgated by the commissioner.

(b) Cigarettes that are acquired, held, owned, possessed,
transported in, imported into or sold or distributed in this state
in violation of this article are considered contraband under
article seventeen, chapter eleven of this code and are subject to
seizure and forfeiture as provided therein. Such cigarettes are
considered contraband whether the violation of this article is
knowing or otherwise.

(c) The state tax commissioner may assess tax due, penalty,
and interest on any product acquired, possessed, sold, or offered
for sale in violation of this article.

(d) Any monetary penalty assessed and collected by the
alcohol beverage control commissioner shall be transmitted to
the state treasurer for deposit into the state treasury to the credit
of “the alcohol beverage control enforcement fund,” established
pursuant to section thirteen, article seven, chapter sixty of this
code. All moneys collected, received and deposited in the
“alcohol beverage control enforcement fund” shall be kept and
maintained for expenditures by the commissioner for the
purpose of enforcement of this article and rules pertaining to
cigarettes and shall not be treated by the state treasurer or state
auditor as any part of the general revenue of the state.

(e) Any person aggrieved by the imposition of a civil
penalty pursuant to this article may request a hearing, within ten
days of receipt of the notice imposing penalties, before the
alcohol beverage control commissioner in the manner set forth
The commissioner may not hold a hearing or impose any civil penalties until after at least ten days' notice to the person of the time and place of such hearing, which notice shall contain a statement or specification of the charges, grounds or reasons for such penalty, and which shall be served upon the person as notices under the West Virginia rules of civil procedure or by certified mail, return receipt requested; at which time and place, so designated in the notice, the person has the right to appear and produce evidence in his or her behalf, and to be represented by counsel.

The commissioner may summon witnesses in the hearing before him or her, and fees of witnesses summoned on behalf of the state in proceedings shall be treated as a part of the expenses of administration and enforcement. The fees shall be the same as those in similar hearings in the circuit courts of this state. The commissioner may, upon a finding of violation, assess a sum, not to exceed two hundred dollars per violation, to reimburse the commissioner for expenditures of witness fees, court reporter fees and travel costs incurred in holding the hearing. Any moneys so assessed shall be transferred to the alcohol beverage control enforcement fund.

The action of the commissioner imposing a civil penalty is subject to review by the circuit court of Kanawha County, West Virginia, in the manner provided in chapter twenty-nine-a of this code. Petition for such review must be filed with the circuit court within a period of thirty days from and after the date final imposition of the civil penalty following hearing, if any, and any person obtaining an order for such review shall be required to pay the costs and fees incident to transcribing, certifying and transmitting the records pertaining to such matter to the circuit court. An application to the supreme court of appeals of West Virginia for a writ of error from any final order of the circuit court in any matter shall be made within thirty days from and after the entry of the final order. All hearings before the
§60-9-6. Unfair trade practices.

A violation of section two or section three of this article constitutes an unlawful trade practice as provided in article eleven-a, chapter forty-seven of this code and, in addition to any remedies or penalties set forth in this article, is subject to any remedies or penalties for a violation of that article.

The alcohol beverage control commissioner shall enforce each and every provision of the unfair trade practices act set forth in article eleven-a, chapter forty-seven of this code with respect to packages of cigarettes with like effect as if said article were set forth in extenso herein.

§60-9-7. Unfair cigarette sales.

For purposes of this article, cigarettes imported or reimported into the United States for sale or distribution under any trade name, trade dress, or trademark that is the same as, or is confusingly similar to, any trade name, trade dress, or trademark used for cigarettes manufactured in the United States shall be presumed to have been purchased outside of the ordinary channels of trade.


(a) This article shall be enforced by the state tax commissioner and the alcohol beverage control commissioner and for the purpose of enforcing this article, the commissioners may request information from any state agency, constitutional officer or local agency and, notwithstanding the provisions of
section five-d, article ten, chapter eleven of this code or any
other provision of this code, may share information with, and
request information from, any federal agency and any agency
or constitutional officer of this or any other state or any local
agency thereof.

(b) A person that acquires, holds, owns, possesses, trans-
ports in or imports into this state cigarettes that are subject to
this article shall, with respect to the cigarettes, maintain and
keep all records required pursuant to article seventeen, chapter
eleven of this code.

(c) In addition to any other remedy provided by law, any
person may bring an action for appropriate injunctive or other
equitable relief for a violation of this article; actual damages, if
any, sustained by reason of the violation; and, as determined by
the court, interest on the damages from the date of complaint,
taxable costs, and reasonable attorney’s fees. If the trier of fact
finds that the violation is flagrant, it may increase recovery to
an amount not in excess of three times the actual damages
sustained by reason of the violation.


This article does not apply to cigarettes allowed to be
imported or brought into the United States for personal use, and
cigarettes sold or intended to be sold as duty-free merchandise
by a duty-free sales enterprise in accordance with the provisions
of 19 U.S.C. 1555(b) and any implementing regulations:
Provided, That this article does apply to any cigarettes that are
brought back into the customs territory for resale within the
customs territory. The penalties provided in this article are in
addition to any other penalties imposed under other law.
AN ACT to amend and reenact sections two and three, article nine-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to sale of tobacco products to minors and use of tobacco products by minors; increasing penalties for firm or individual selling tobacco or tobacco-related products to minors; and increasing penalties for minors possessing tobacco products.

Be it enacted by the Legislature of West Virginia:

That sections two and three, article nine-a, 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 9A. TOBACCO USAGE RESTRICTIONS.

§16-9A-2.Sale or gift of cigarette, cigarette paper, pipe, cigar, snuff, or chewing tobacco to persons under eighteen; penalties for first and subsequent offense.

§16-9A-3. Use or possession of tobacco or tobacco products by persons under the age of eighteen years; penalties.

§16-9A-2. Sale or gift of cigarette, cigarette paper, pipe, cigar, snuff, or chewing tobacco to persons under eighteen; penalties for first and subsequent offense.

(a) No person, firm, corporation or business entity may sell, give or furnish, or cause to be sold, given or furnished, to any person under the age of eighteen years:
(1) Any pipe, cigarette paper or any other paper prepared, manufactured or made for the purpose of smoking any tobacco or tobacco product; or

(2) Any cigar, cigarette, snuff, chewing tobacco or tobacco product, in any form.

(b) Any firm or corporation that violates any of the provisions of subdivision (1) or (2), subsection (a) of this section and any individual who violates any of the provisions of subdivision (1), subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined twenty-five dollars for the first offense. Upon any subsequent violation at the same location or operating unit, the firm, corporation or individual shall be fined as follows: At least one hundred dollars but not more than two hundred dollars for the second offense, if it occurs within two years of the first conviction; at least two hundred fifty dollars but not more than five hundred dollars for the third offense, if it occurs within five years of the first conviction; at least two hundred fifty dollars but not more than five hundred dollars for the fourth offense, if it occurs within five years of the first conviction; and at least one thousand dollars but not more than five thousand dollars for the fifth and any subsequent offenses, if the fifth or subsequent offense occurs within five years of the first conviction.

(c) Any individual who knowingly and intentionally sells, gives or furnishes or causes to be sold, given or furnished to any person under the age of eighteen years any cigar, cigarette, snuff, chewing tobacco or tobacco product, in any form, is guilty of a misdemeanor and, upon conviction thereof, for the first offense shall be fined not more than one hundred dollars; upon conviction thereof for a second or subsequent offense, is guilty of a misdemeanor and shall be fined not less than one hundred nor more than five hundred dollars.
§16-9A-3. Use or possession of tobacco or tobacco products by persons under the age of eighteen years; penalties.

No person under the age of eighteen years shall have on or about his or her person or premises or use any cigarette, or cigarette paper or any other paper prepared, manufactured or made for the purpose of smoking any tobacco products, in any form; or, any pipe, snuff, chewing tobacco or tobacco product: Provided, That minors participating in the inspection of locations where tobacco products are sold or distributed pursuant to section seven of this article shall not be deemed to violate the provisions of this section. Any person violating the provisions of this section shall for the first violation be fined twenty-five dollars and be required to serve eight hours of community service; for a second violation, the person shall be fined fifty dollars and be required to serve sixteen hours of community service; and for a third and each subsequent violation, the person shall be fined one hundred dollars and be required to serve twenty-four hours of community service. Notwithstanding the provisions of section two, article five, chapter forty-nine, the magistrate court shall have concurrent jurisdiction.

CHAPTER 269

(Com. Sub. for H. B. 4183 — By Delegates Rowe, C. White, Ashley, Manuel, Hunt, Webb and J. Smith)

[Passed March 9, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article nine-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eight, relating to prohibiting the sale of tobacco products in vending machines.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9A. TOBACCO USAGE RESTRICTIONS.

§16-9A-8. Selling of tobacco products in vending machines prohibited except in certain places.

No person or business entity may offer for sale any cigarette or other tobacco product in a vending machine. Any person or business entity which violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined two hundred fifty dollars: Provided, That an establishment is exempt from this prohibition if individuals under the age of eighteen years are not permitted to be in the establishment or if the establishment is licensed by the alcohol beverage control commissioner as a class A licensee. The alcohol beverage control commissioner shall promulgate rules pursuant to article three, chapter twenty-nine-a of this code prior to the first day of July, two thousand, which rules shall establish standards for the location and control of the vending machines in class A licensed establishments for the purpose of restricting access by minors.

CHAPTER 270

(Com. Sub. for S. B. 206 — By Senators Ross, Sharpe, Anderson, Ball, Dittmar, Kessler, Love, McKenzie, Oliverio, Plymale and Redd)

[Passed March 10, 2000; in effect ninety days from passage. Approved by the Governor.]
hundred thirty-one, as amended, relating to excluding owners
or drivers who have been issued a commercial driver’s license
from certain provisions relating to penalties for violation of
speed limits.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. SPEED RESTRICTIONS.

§17C-6-1. Speed limitations generally; penalty.

(a) No person may drive a vehicle on a highway at a speed
greater than is reasonable and prudent under the existing
conditions and the actual and potential hazards. In every event
speed shall be so controlled as may be necessary to avoid
colliding with any person, vehicle or other conveyance on or
entering the highways in compliance with legal requirements
and the duty of all persons to use due care.

(b) Where no special hazard exists that requires lower speed
for compliance with subsection (a) of this section, the speed of
any vehicle not in excess of the limits specified in this section
or established as hereinafter authorized is lawful, but any speed
in excess of the limits specified in this subsection or established
as hereinafter authorized is unlawful.

(1) Fifteen miles per hour in a school zone during school
recess or while children are going to or leaving school during
opening or closing hours. A school zone is all school property
including school grounds and any street or highway abutting
such school grounds and extending one hundred twenty-five
feet along such street or highway from the school grounds. The
speed restriction does not apply to vehicles traveling on a
controlled-access highway which is separated from the school
or school grounds by a fence or barrier approved by the division of highways;

(2) Twenty-five miles per hour in any business or residence district;

(3) Fifty-five miles per hour on open country highways, except as otherwise provided by this chapter.

The speeds set forth in this section may be altered as authorized in sections two and three of this article.

(c) The driver of every vehicle shall, consistent with the requirements of subsection (a) of this section, drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway and when special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions.

(d) The speed limit on controlled-access highways and interstate highways, where no special hazard exists that requires a lower speed, shall be not less than fifty-five miles per hour and the speed limits specified in subsection (b) of this section do not apply.

(e) Unless otherwise provided in this section, any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and, upon a third or subsequent conviction within two years thereafter, shall be fined not more than five hundred dollars: Provided, That if such third or subsequent conviction is based upon a violation of the provisions of this section where the offender exceeded the speed limit by fifteen miles per hour or more, then upon conviction, shall be fined not more than five
hundred dollars or confined in the county or regional jail for not more than six months, or both.

(f) Any person who violates the provisions of subdivision (1), subsection (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars: Provided, That if such conviction is based upon a violation of the provisions of subdivision (1), subsection (b) of this section where the offender exceeded the speed limit by fifteen miles per hour or more in the presence of one or more children, then upon conviction, shall be fined not less than one hundred dollars nor more than five hundred dollars or confined in the regional or county jail for not more than six months, or both.

(g) If an owner or driver is arrested under the provisions of this section for the offense of driving above the posted speed limit on a controlled-access highway or interstate highway, and if the evidence shall show that the motor vehicle was being operated at ten miles per hour or less above said speed limit, then, upon conviction thereof, such person shall be fined not more than five dollars, plus court costs.

If an owner or driver is convicted under the provisions of this section for the offense of driving above the speed limit on a controlled-access highway or interstate highway of this state, and if the evidence shall show that the motor vehicle was being operated at ten miles per hour or less above said speed limit, then notwithstanding the provisions of section four, article three, chapter seventeen-b of this code, a certified abstract of the judgment on such conviction shall not be transmitted to the division of motor vehicles: Provided, That the provisions of this subsection do not apply to conviction of owners or drivers who have been issued a commercial driver's license as defined in chapter seventeen-e of this code, if the offense was committed while operating a commercial vehicle.
(h) If an owner or driver is convicted in another state for the offense of driving above the maximum speed limit on a controlled-access highway or interstate highway, and if the maximum speed limit in such other state is less than the maximum speed limit for a comparable controlled-access highway or interstate highway in this state, and if the evidence shall show that the motor vehicle was being operated at ten miles per hour or less above what would be the maximum speed limit for a comparable controlled-access highway or interstate highway in this state, then notwithstanding the provisions of section four, article three, chapter seventeen-b of this code, a certified abstract of the judgment on such conviction shall not be transmitted to the division of motor vehicles, or, if transmitted, shall not be recorded by the division, unless within a reasonable time after conviction, the person convicted has failed to pay all fines and costs imposed by the other state: Provided, That the provisions of this subsection do not apply to conviction of owners or drivers who have been issued a commercial driver's license as defined in chapter seventeen-e of this code, if the offense was committed while operating a commercial vehicle.

CHAPTER 271

(H. B. 4536 — By Delegate Warner)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article thirteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to prohibiting placing of vehicle in wheelchair accessible area marked with blue paint.

Be it enacted by the Legislature of West Virginia:
That section three, article thirteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 13. STOPPING, STANDING AND PARKING.

§17C-13-3. Stopping, standing or parking prohibited in specified places; penalty.

(a) No person shall stop, stand or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer or traffic-control device, in any of the following places:

(1) On a sidewalk;

(2) In front of a public or private driveway;

(3) Within an intersection;

(4) Within fifteen feet of a fire hydrant;

(5) In a properly designated fire lane;

(6) On a crosswalk;

(7) Within twenty feet of a crosswalk at an intersection;

(8) Within thirty feet upon the approach to any flashing beacon, stop sign or traffic-control signal located at the side of a roadway;

(9) Between a safety zone and the adjacent curb or within thirty feet of points on the curb immediately opposite the ends of a safety zone, unless a different length is indicated by signs or markings;

(10) Within fifty feet of the nearest rail of a railroad crossing;

(11) Within twenty feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any
23 fire station within seventy-five feet of the entrance (when properly signposted);
24 (12) Alongside or opposite any street excavation or obstruction when stopping, standing or parking would obstruct traffic;
25 (13) On the roadway side of any vehicle stopped or parked at the edge or curb of a street;
26 (14) On any bridge or other elevated structure on a highway or within a highway tunnel;
27 (15) At any place where official signs prohibit stopping;
28 (16) Within twenty feet of any mail receptacle served regularly by a carrier using a motor vehicle for daily deliveries, if the parking interferes with or causes delay in the carrier’s schedule;
29 (17) On any controlled-access highway;
30 (18) At any place on any highway where the safety and convenience of the traveling public is thereby endangered;
31 (19) In front of a wheelchair accessible ramp or curb cut which is part of a sidewalk designed for use by the general public when the ramp or curb cut is properly marked with blue paint.
32 (b) No person shall move a vehicle not lawfully under his or her control into any prohibited area or away from a curb such distance as is unlawful.
33 (c) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.
AN ACT to amend and reenact sections one hundred five and two hundred one, article one, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one hundred three, two hundred ten, three hundred twenty-six, five hundred two and seven hundred sixteen, article two of said chapter; to amend and reenact sections one hundred three, three hundred three, three hundred seven and three hundred nine, article two-a of said chapter; to amend and reenact section two hundred ten, article four of said chapter; to amend and reenact section one hundred eighteen, article five of said chapter; to amend and reenact section five hundred three, article seven of said chapter; to amend and reenact sections one hundred three, one hundred six, one hundred ten, three hundred two and five hundred ten, article eight of said chapter; to amend and reenact article nine of said chapter; and to amend article two, chapter forty-six-a of said code by adding thereto a new section, designated section one hundred nineteen-a, all relating generally to secured transactions; revising the secured transaction provisions of the uniform commercial code; revising conforming provisions of the uniform commercial code; establishing applicable law; redefining terms; providing for sales; establishing definitions by reference; providing for delegation of power and assignment of rights; clarifying certain types of sales; establishing buyer’s rights when seller fails to perform; providing for the buyer’s right of replevin; providing for leases; establishing definitions by reference; setting forth rights of parties; providing
for lien priority; establishing rights of parties when goods become fixtures; revising code references for purposes of bank deposits; providing for letters of credit and establishing priorities of security interests therein; revising code references pertaining to warehouse receipts; revising code references pertaining to investment securities; updating provisions governing "control" of security entitlement; clarifying governing law; establishing requirements for transfer of certificated and uncertificated securities; providing for rights of purchasers; establishing new provisions for transactions secured by personal property; setting forth short title; defining terms; providing for purchase-money security interests; providing for a security interest in crops; setting forth requirements to control deposit accounts, electronic chattel paper, investment property and letter-of-credit rights; providing for the sufficiency of descriptions; establishing scope of article; providing for security interests and the effectiveness thereof; establishing that title to collateral is immaterial; providing for the attachment and enforceability of security interest proceeds; providing for a security interest in after-acquired collateral; authorizing use or disposition of collateral; providing for security interest in purchase or delivery of financial asset; setting forth rights and duties of secured party; authorizing certain requests for accounting; establishing perfection and priority of security interests generally and in agricultural liens, goods covered by a certificate of title, deposit accounts, investment property and letter-of-credit rights; providing for the location of debtor; providing for the perfection of security interests and agricultural liens; establishing perfection upon attachment; requiring filing to perfect certain liens; providing for perfection when security interest subject to another law; providing for additional methods of perfection; providing for perfection by possession, by delivery to a third party or by control; establishing secured party's or by control; establishing secured party's rights on disposition of collateral; providing for continued perfection of security interest when governing law changes; establishing lien priority; providing
that no interest retained in right to payment that is sold; establishing rights and title of consignees; providing for the buyer of goods and for licensees; establishing priorities among conflicting interests, future advances, purchase-money security interests, agricultural liens, transferred collateral, security interests created by a new debtor, deposit accounts, investment property, letter-of-credit rights, purchaser of chattel paper or instrument and priority of rights of purchasers; providing for the transfer of funds; establishing priority of liens arising by operation of law and security interests in fixtures and crops; authorizing creation of security interest by accession; providing for commingled goods; establishing priority of certain security interests; providing for subordination; establishing rights of bank; providing for rights of third parties; setting forth restrictions; providing for filing offices and financing statements; establishing duties and operation of filing office; providing uniform financing statement and amendment forms; setting forth procedures for default and enforcement of security interests; establishing contents and forms of notification of disposition of collateral; providing for the disposition of collateral and the rights and duties subsequent thereto; establishing remedies for noncompliance; limiting liability; establishing transition provisions including certain operative dates; establishing priority of certain security interests; and providing for the use of price guide value in calculating deficiency or surplus in secured transactions in which the collateral is primarily for personal, family, household or agricultural purposes.

Be it enacted by the Legislature of West Virginia:

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

Chapter

46. Uniform Commercial Code.

46A. West Virginia Consumer Credit and Protection Act.

CHAPTER 46. UNIFORM COMMERCIAL CODE.

Article


2. Sales.

2A. Leases.

4. Bank Deposits and Collections.

5. Letters of Credit.

7. Warehouse Receipts, Bills of Lading and Other Documents of Title.

8. Investment Securities.


ARTICLE 1. GENERAL PROVISIONS.

§46-1-105. Territorial application of this chapter; parties’ power to choose applicable law.

§46-1-201. General definitions.

*§46-1-105. Territorial application of this chapter; parties’ power to choose applicable law.

1 (1) Except as provided hereafter in this section, when a
2 transaction bears a reasonable relation to this state and also to
3 another state or nation the parties may agree that the law either

*Clerk’s Note: This section was amended to bring it into conformity with the newly
enacted article nine, chapter forty-six, which will take effect July 1, 2001.
of this state or of such other state or nation shall govern their
rights and duties. Failing such agreement this chapter applies to
transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this chapter
specifies the applicable law, that provision governs and a
contrary agreement is effective only to the extent permitted by
the law (including the conflict of laws rules) so specified:

Sections 2A-105 and 2A-106, applicability of the article on
leases.

Section 2-402, rights of creditors against sold goods.

Section 4-102, applicability of the article on bank deposits
and collections.

Section 5-116, letters of credit.

Section 8-106, applicability of the article on investment
securities.

Sections 9-301 through 9-307. Law governing perfection,
the effect of perfection or nonperfection, and the priority of
security interest and agricultural liens.

PART 2. GENERAL DEFINITIONS AND PRINCIPLES
OF INTERPRETATION.

§46-1-201. General definitions.

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

(1) “Action” in the sense of a judicial proceeding includes
recoupment, counterclaim, setoff, suit in equity and any other
proceedings in which rights are determined.

*Clerk’s Note: This section was amended to bring it into conformity with the newly
enacted article nine, chapter forty-six, which will take effect July 1,
(2) "Aggrieved party" means a party entitled to resort to a remedy.

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

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

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

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

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

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

(9) "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the
usual or customary practices in the kind of business in which
the seller is engaged or with the seller's own usual or customary
practices. A person that sells oil, gas or other minerals at the
wellhead or minehead is a person in the business of selling
goods of that kind. A buyer in the ordinary course of business
may buy for cash, by exchange of other property, or on secured
or unsecured credit, and may acquire goods or documents of
title under a preexisting contract for sale. Only a buyer that
takes possession of the goods or has a right to recover the goods
from the seller under article two may be a buyer in the ordinary
course of business. A person that acquires goods in a transfer in
bulk or as security for or in total or partial satisfaction of a
money debt is not a buyer in ordinary course of business.

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

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

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

(13) "Defendant" includes a person in the position of
defendant in a cross action or counterclaim.
(14) "Delivery" with respect to instruments, documents of title, chattel paper or certificated securities means voluntary transfer of possession.

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

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

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

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

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

(20) "Holder" with respect to a negotiable instrument means the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the identified person is in possession. "Holder" with respect to a document of title means the person in possession if the goods are deliverable to the bearer or to the order of the person in possession.
(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

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

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

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

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

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when:
   (a) It comes to his or her attention; or
(b) It is duly delivered at the place of business through which the contract was made or at any other place held out by him or her as the place for receipt of such communications.

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

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

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

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

(31) “Presumption” or “presumed” means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.
(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift or any other voluntary transaction creating an interest in property.

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

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

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

(36) "Rights" includes remedies.

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The term also includes any interest of consignor and a buyer of accounts, chattel paper, a payment intangible or a promissory note in a transaction that is subject to article nine. The special property interest of a buyer of goods on identification of those goods to a contract for sale under section 2-401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with article nine. Except as otherwise provided in section 2-505, the right of a seller or lessor of goods under article two or two-a of this chapter to retain or acquire possession of the goods is not a "security interest", but a seller or lessor may also acquire a "security interest" by complying with article nine of this chapter. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (section 2-401) is limited in effect to a reservation of a "security interest".

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the
circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

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

(40) "Surety" includes guarantor.

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

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

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

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

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

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

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

(d) Generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting or any other intentional reduction to tangible form.
ARTICLE 2. SALES.

§46-2-103. Definitions and index of definitions.


§46-2-326. Sale on approval and sale or return; rights of creditors.

§46-2-502. Buyer’s right to goods on seller’s repudiation, failure to deliver, or insolvency.

§46-2-716. Buyer’s right to specific performance or replevin.

*§46-2-103. Definitions and index of definitions.

1 (1) In this article unless the context otherwise requires:
2 (a) “Buyer” means a person who buys or contracts to buy goods.
3 (b) “Good faith” in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.
4 (c) “Receipt” of goods means taking physical possession of them.
5 (d) “Seller” means a person who sells or contracts to sell goods.
6 (2) Other definitions applying to this article or to specified parts thereof, and the sections in which they appear are:
7 “Acceptance”. Section 2-606.
8 “Banker’s credit”. Section 2-325.
9 “Between merchants”. Section 2-104.
10 “Cancellation”. Section 2-106 (4).
11 “Commercial unit”. Section 2-105.
12 “Confirmed credit”. Section 2-325.
13 “Conforming to contract”. Section 2-106.

*Clerk’s Note: This section was amended to bring it into conformity with the newly enacted article nine, chapter forty-six, which will take effect July 1, 2001.
20 "Contract for sale". Section 2-106.
21 "Cover". Section 2-712.
22 "Entrusting". Section 2-403.
23 "Financing agency". Section 2-104.
24 "Future goods". Section 2-105.
25 "Goods". Section 2-105.
26 "Identification". Section 2-501.
27 "Installment contract". Section 2-612.
28 "Letter of credit". Section 2-325.
29 "Lot". Section 2-105.
30 "Merchant". Section 2-104.
31 "Overseas". Section 2-323.
32 "Person in position of seller". Section 2-707.
33 "Present sale". Section 2-106.
34 "Sale". Section 2-106.
35 "Sale on approval". Section 2-326.
36 "Sale or return". Section 2-326.
37 "Termination". Section 2-106.
38 (3) The following definitions in other articles of this chapter apply to this article:
39 "Check." Section 3-104.
40 "Consignee." Section 7-102.
41 "Consignor." Section 7-102.
42 "Consumer goods." Section 9-102.
“Dishonor.” Section 3-502.

“Draft.” Section 3-104.

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


1 (1) A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promissor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

2 (2) Unless otherwise agreed, all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor’s due performance of his entire obligation can be assigned despite agreement otherwise.

3 (3) The creation, attachment, perfection or enforcement of a security interest in the seller’s interest under a contract is not a transfer that materially changes the duty of or increases materially the burden or risk imposed on the buyer or impairs materially the buyer’s chance of obtaining return performance within the purview of subsection (2) of this article unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the seller. Even in that event, the creation, attachment, perfection and enforcement of the security interest remains effective, but: (i) The seller is liable to the buyer for damages caused by the delegation to the

*Clerk’s Note: This section was amended to bring it into conformity with the newly enacted article nine, chapter forty-six, which will take effect July 1, 2001.*
extent that the damages could not reasonably be prevented by
the buyer; and (ii) a court having jurisdiction may grant other
appropriate relief, including cancellation of the contract for sale
or an injunction against enforcement of the security interest or
consummation of the enforcement.

(4) Unless the circumstances indicate the contrary a
prohibition of assignment of "the contract" is to be construed as
barring only the delegation to the assignee of the assignor's
performance.

(5) An assignment of "the contract" or of "all my rights
under the contract" or an assignment in similar general terms is
an assignment of rights and unless the language or the circum-
stances (as in an assignment for security) indicate the contrary,
it is a delegation of performance of the duties of the assignor
and its acceptance by the assignee constitutes a promise by him
to perform those duties. This promise is enforceable by either
the assignor or the other party to the original contract.

(6) The other party may treat any assignment which
delates performance as creating reasonable grounds for
insecurity and may without prejudice to his rights against the
assignor demand assurances from the assignee (section 2-609).

*§46-2-326. Sale on approval and sale or return; rights of credi-
tors.

(1) Unless otherwise agreed, if delivered goods may be
returned by the buyer even though they conform to the contract,
the transaction is:

(a) A "sale on approval" if the goods are delivered primar-
ily for use, and

(b) A "sale or return" if the goods are delivered primarily
for resale.

*Clerk's Note: This section was amended to bring it into conformity with the newly
enacted article nine, chapter forty-six, which will take effect July 1, 2001.
Goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

(3) Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this article (section 2-201) and as contradicting the sale aspect of the contract within the provisions of this article on parol or extrinsic evidence (section 2-202).

*§46-2-502. Buyer's right to goods on seller's repudiation, failure to deliver, or insolvency.

(1) Subject to subsections (2) and (3) of this section, and even though the goods have not been shipped, a buyer who has paid a part or all of the price of goods in which he has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if:

(a) In the case of goods bought for personal, family, or household purposes, the seller repudiates or fails to deliver as required by the contract; or

(b) In all cases, the seller becomes insolvent within ten days after receipt of the first installment on their price.

(2) The buyer's right to recover the goods under subsection (1)(a) vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

(3) If the identification creating his special property has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale.

*§46-2-716. Buyer's right to specific performance or replevin.

*Clerk's Note: This section was amended to bring it into conformity with the newly enacted article nine, chapter forty-six, which will take effect July 1, 2001.
(1) Specific performance may be decreed where the goods are unique or in other proper circumstances.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

(3) The buyer has a right of replevin for goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered. In the case of goods bought for personal, family, or household purposes, the buyer’s right of replevin vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

ARTICLE 2A. LEASES.

§46-2A-103. Definitions and index of definitions.

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

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

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

*§46-2A-103. Definitions and index of definitions.

(1) In this article unless the context otherwise requires:

(a) “Buyer in ordinary course of business” means a person who in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. “Buying” may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a

*Clerk’s Note: This section was amended to bring it into conformity with the newly enacted article nine, chapter forty-six, which will take effect July 1, 2001.
(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

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

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

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

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

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

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

(iii) One of the following occurs:

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

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

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

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

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.
(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

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

(l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this article and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

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

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

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

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

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

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

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

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

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

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

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

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

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

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

"Construction mortgage". Section 2A-309(1)(d).

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

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

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

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

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

"Account". Section 9-102(a)(2).

"Between merchants". Section 2-104(3).

"Buyer". Section 2-103(1)(a).

"Chattel paper". Section 9-102(a)(11).

"Consumer goods". Section 9-102(a)(23).

"Document". Section 9-102(a)(30).

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

"General intangible". Section 9-102(a)(42).

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

"Instrument". Section 9-102(a)(47).
“Merchant”. Section 2-104(1).

“Mortgage”. Section 9-102(a)(55).

“Pursuant to commitment”. Section 9-102(a)(68).

“Receipt”. Section 2-103(1)(c).

“Sale”. Section 2-106(1).

“Sale on approval”. Section 2-326.

“Sale or return”. Section 2-326.

“Seller”. Section 2-103(1)(d).

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

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

(1) As used in this section, “creation of a security interest” includes the sale of a lease contract that is subject to article nine, secured transactions, by reason of section 9-109(a)(3).

(2) Except as provided in subsection (3) and section 9-407, a provision in a lease agreement which: (i) Prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor’s residual interest in the goods; or (ii) makes such a transfer an event of default, gives rise to the rights and remedies provided in subsection (5) of this section, but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

*Clerk’s Note: This section was amended to bring it into conformity with the newly enacted article nine, chapter forty-six, which will take effect July 1, 2001.
(3) A provision in a lease agreement which: (i) Prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation; or (ii) makes such a transfer an event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract within the purview of subsection (4).

(4) Subject to subsection (3) of this section and section 9-407:

(a) If a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in section 2A-501(2);

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

(5) A transfer of "the lease" or of "all my rights under the lease", or a transfer in similar general terms, is a transfer of
47 rights and, unless the language or the circumstances, as in a
48 transfer for security, indicate the contrary, the transfer is a
49 delegation of duties by the transferor to the transferee. Accep-
50 tance by the transferee constitutes a promise by the transferee
to perform those duties. The promise is enforceable by either
51 the transferor or the other party to the lease contract.
52
53   (6) Unless otherwise agreed by the lessor and the lessee, a
delagation of performance does not relieve the transferor as
against the other party of any duty to perform or of any liability
for default.
57
58   (7) In a consumer lease, to prohibit the transfer of an
interest of a party under the lease contract or to make a transfer
an event of default, the language must be specific, by a writing,
and conspicuous.

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

1   (1) Except as otherwise provided in section 2A-306, a
2 creditor of a lessee takes subject to the lease contract.
3
4   (2) Except as otherwise provided in subsection (3) of this
section and in sections 2A-306 and 2A-308, a creditor of a
5 lessor takes subject to the lease contract unless the creditor
6 holds a lien that attached to the goods before the lease contract
7 became enforceable.
8
9   (3) Except as otherwise provided in sections 9-317, 9-321,
10 and 9-323, a lessee takes a leasehold interest subject to a
security interest held by a creditor of the lessor.

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

1   (1) In this section:

*Clerk’s Note: This section was amended to bring it into conformity with the newly
enacted article nine, chapter forty-six, which will take effect July 1,
(a) Goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law;

(b) A "fixture filing" is the filing, in the office where a mortgage on the real estate would be filed or recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of section 9-502(a) and (b);

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

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

(e) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

(2) Under this article a lease may be of goods that are fixtures or may continue in goods that become fixtures, but no lease exists under this article of ordinary building materials incorporated into an improvement on land.

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

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

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

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

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

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

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

53 (c) The encumbrancer or owner has consented in writing to the lease or has disclaimed an interest in the goods as fixtures; or

56 (d) The lessee has a right to remove the goods as against the encumbrancer or owner. If the lessee’s right to remove terminates, the priority of the interest of the lessor continues for a reasonable time.

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

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

(8) If the interest of a lessor of fixtures, including the lessor’s residual interest, has priority over all conflicting interests of all owners and encumbrancers of the real estate, the lessor or the lessee may: (i) On default, expiration, termination or cancellation of the lease agreement but subject to the lease agreement and this article; or (ii) if necessary to enforce other rights and remedies of the lessor or lessee under this article, remove the goods from the real estate, free and clear of all conflicting interests of all owners and encumbrancers of the real estate, but the lessor or lessee must reimburse any encumbrancer or owner of the real estate who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

(9) Even though the lease agreement does not create a security interest, the interest of a lessor of fixtures, including the lessor’s residual interest, is perfected by filing a financing statement as a fixture filing for leased goods that are or are to
become fixtures in accordance with the relevant provisions of
the article on secured transactions (article nine).

ARTICLE 4. BANK DEPOSITS AND COLLECTIONS.

*§46-4-210. Security interest of collecting bank in items, accom-
panying documents and proceeds.

(a) A collecting bank has a security interest in an item and
any accompanying documents or the proceeds of either:

(1) In case of an item deposited in an account, to the extent
to which credit given for the item has been withdrawn or
applied;

(2) In case of an item for which it has given credit available
for withdrawal as of right, to the extent of the credit given,
whether or not the credit is drawn upon or there is a right of
charge-back; or

(3) If it makes an advance on or against the item.

(b) If credit given for several items received at one time or
pursuant to a single agreement is withdrawn or applied in part,
the security interest remains upon all the items, any accompa-
nying documents or the proceeds of either. For the purpose of
this section, credits first given are first withdrawn.

(c) Receipt by a collecting bank of a final settlement for an
item is a realization on its security interest in the item, accom-
panying documents and proceeds. So long as the bank does not
receive final settlement for the item or give up possession of the
item or accompanying documents for purposes other than
collection, the security interest continues to that extent and is
subject to article nine but:

(1) No security agreement is necessary to make the security
interest enforceable (section 9-203(b)(3)(A));

*Clerk's Note: This section was amended to bring it into conformity with the newly
enacted article nine, chapter forty-six, which will take effect July 1,
(2) No filing is required to perfect the security interest; and

(3) The security interest has priority over conflicting perfected security interests in the item, accompanying documents or proceeds.

ARTICLE 5. LETTERS OF CREDIT.

§46-5-118. Security interest of issuer or nominated persons.

(a) An issuer or nominated person has a security interest in a document presented under a letter of credit to the extent that the issuer or nominated person honors or gives value for the presentation.

(b) So long as and to the extent that an issuer or nominated person has not been reimbursed or has not otherwise recovered the value given with respect to a security interest in a document under subsection (a), the security interest continues and is subject to article nine, but:

(1) A security agreement is not necessary to make the security interest enforceable under section 9-203(b)(3);

(2) If the document is presented in a medium other than a written or other tangible medium, the security interest is perfected; and

(3) If the document is presented in a written or other tangible medium and is not a certificated security, chattel paper, a document of title, an instrument, or a letter of credit, the security interest is perfected and has priority over a conflicting security interest in the document so long as the debtor does not have possession of the document.

ARTICLE 7. WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE.

*Clerk's Note: This section was amended to bring it into conformity with the newly enacted article nine, chapter forty-six, which will take effect July 1, 2001.
§46-7-503. Document of title to goods defeated in certain cases.

1. (1) A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither:

   a. Delivered or entrusted them or any document of title covering them to the bailor or his nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this article (section 7-403) or with power of disposition under this chapter (sections 2-403 and 9-320) or other statute or rule of law; nor

   b. Acquiesced in the procurement by the bailor or his nominee of any document of title.

2. (2) Title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. Such a title may be defeated under the next section to the same extent as the rights of the issuer or a transferee from the issuer.

3. (3) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of anyone to whom a bill issued by the freight forwarder is duly negotiated; but delivery by the carrier in accordance with part 4 of this article pursuant to its own bill of lading discharges the carrier's obligation to deliver.

ARTICLE 8. INVESTMENT SECURITIES.

§46-8-103. Rules for determining whether certain obligations and interests are securities or financial assets.

§46-8-106. Control.

§46-8-110. Applicability; choice of law.

§46-8-301. Delivery.

§46-8-302. Rights of purchaser.

§46-8-510. Rights of purchaser of security entitlement from entitlement holder.

*Clerk's Note: This section was amended to bring it into conformity with the newly enacted article nine, chapter forty-six, which will take effect July 1, 2001.
§46-8-103. Rules for determining whether certain obligations and interests are securities or financial assets.

(a) A share or similar equity interest issued by a corporation, business trust, joint stock company or similar entity is a security.

(b) An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(c) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this article or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(d) A writing that is a security certificate is governed by this article and not by article three of this chapter, even though it also meets the requirements of that article. However, a negotiable instrument governed by article three is a financial asset if it is held in a securities account.

(e) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(f) A commodity contract, as defined in section 9-102(a)(15), is not a security or a financial asset.

*Clerk's Note: This section was amended to bring it into conformity with the newly enacted article nine, chapter forty-six, which will take effect July 1, 2001.*
§46-8-106. Control.

(a) A purchaser has "control" of a certificated security in bearer form if the certificated security is delivered to the purchaser.

(b) A purchaser has "control" of a certificated security in registered form if the certificated security is delivered to the purchaser and:

(1) The certificate is indorsed to the purchaser or in blank by an effective indorsement;

(2) The certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer; or

(3) Another person has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser.

(c) A purchaser has "control" of an uncertificated security if:

(1) The uncertificated security is delivered to the purchaser; or

(2) The issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.

(d) A purchaser has "control" of a security entitlement if:

(1) The purchaser becomes the entitlement holder; or

(2) The securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder.

*Clerk's Note:* This section was amended to bring it into conformity with the newly enacted article nine, chapter forty-six, which will take effect July 1, 2001.
(e) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder’s own securities intermediary, the securities intermediary has control.

(f) A purchaser who has satisfied the requirements of subdivision (2), subsection (c) of this section or subdivision (2), subsection (d) of this section has control even if the registered owner in the case of subdivision (2), subsection (c) of this section, subsection (c) of this section or the entitlement holder in the case of subdivision (2), subsection (d) of this section retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.

(g) An issuer or a securities intermediary may not enter into an agreement of the kind described in subdivision (2), subsection (c) of this section or subdivision (2), subsection (d) of this section without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

*§46-8-110. Applicability; choice of law.*

(a) The local law of the issuer’s jurisdiction, as specified in subsection (d) of this section governs:

(1) The validity of a security;

(2) The rights and duties of the issuer with respect to registration of transfer;

*Clerk’s Note: This section was amended to bring it into conformity with the newly enacted article nine, chapter forty-six, which will take effect July 1, 2001.*
(3) The effectiveness of registration of transfer by the issuer;

(4) Whether the issuer owes any duties to an adverse claimant to a security; and

(5) Whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

(b) The local law of the securities intermediary’s jurisdiction, as specified in subsection (e) of this section, governs:

(1) Acquisition of a security entitlement from the securities intermediary;

(2) The rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;

(3) Whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and

(4) Whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.

(c) The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

(d) “Issuer’s jurisdiction” means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the law of this state may specify the law of another jurisdiction as the law governing the matters specified in subdivisions (2) through (5), inclusive, subsection (a) of this section.
(e) The following rules determine a “securities intermediary’s jurisdiction” for purposes of this section:

(1) If an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that a particular jurisdiction is the securities intermediary’s jurisdiction for purposes of this part, this article, or this chapter, that jurisdiction is the securities intermediary’s jurisdiction.

(2) If subdivision (1) does not apply and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the agreement is governed by the law of a particular jurisdiction, the jurisdiction is the securities intermediary’s jurisdiction.

(3) If neither subdivision (1) nor subdivision (2) of this subsection applies and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary’s jurisdiction.

(4) If none of the preceding subdivisions apply, the securities intermediary’s jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the entitlement holder’s account is located.

(5) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in subdivision (1) or (2) of this subsection and an account statement does not identify an office serving the entitlement holder’s account as provided in subdivision (3) of this subsection, the securities intermediary’s jurisdiction is the jurisdiction in which is located the chief executive office of the securities intermediary.
(f) A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement or by the location of facilities for data processing or other record keeping concerning the account.

PART 3. TRANSFER OF CERTIFICATED AND UNCERTIFICATED SECURITIES.

*§46-8-301. Delivery.

(a) Delivery of a certificated security to a purchaser occurs when:

(1) The purchaser acquires possession of the security certificate;

(2) Another person, other than a securities intermediary, either acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the certificate, acknowledges that it holds for the purchaser; or

(3) A securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and is: (i) Registered in the name of the purchaser; (ii) payable to the order of the purchaser; or (iii) specially endorsed to the purchaser by an effective endorsement and has not been endorsed to the securities intermediary or in blank.

(b) Delivery of an uncertificated security to a purchaser occurs when:

(1) The issuer registers the purchaser as the registered owner, upon original issue or registration of transfer; or

*Clerk's Note: This section was amended to bring it into conformity with the newly enacted article nine, chapter forty-six, which will take effect July 1, 2001.
(2) Another person, other than a securities intermediary, either becomes the registered owner of the uncertificated security on behalf of the purchaser or, having previously become the registered owner, acknowledges that it holds for the purchaser.

*§46-8-302. Rights of purchaser.

(a) Except as otherwise provided in subsections (b) and (c) of this section, a purchaser of a certificated or uncertificated security acquires all rights in the security that the transferor had or had power to transfer.

(b) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

(c) A purchaser of a certificated security who as a previous holder had notice of an adverse claim does not improve its position by taking from a protected purchaser.

*§46-8-510. Rights of purchaser of security entitlement from entitlement holder.

(a) In a case not covered by the priority rules in article nine or the rules stated in subsection (c) of this section, an action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.

(b) If an adverse claim could not have been asserted against an entitlement holder under section 8-502, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

*Clerk's Note: This section was amended to bring it into conformity with the newly enacted article nine, chapter forty-six, which will take effect July 1, 2001.
(c) In a case not covered by the priority rules in article nine, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. Except as otherwise provided in subsection (d) of this section, purchasers who have control rank according to priority in time of:

1. The purchaser's becoming the person for whom the securities account, in which the security entitlement is carried, is maintained, if the purchaser obtained control under section 8-106(d)(1);

2. The securities intermediary's agreement to comply with the purchaser's entitlement orders with respect to security entitlements carried or to be carried in the securities account in which the security entitlement is carried, if the purchaser obtained control under section 8-106(d)(2); or

3. If the purchaser obtained control through another person under section 8-106(d)(3), the time on which priority would be based under this subsection if the other person were the secured party.

(d) A securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary.

ARTICLE 9. SECURED TRANSACTIONS.

PART 1. GENERAL PROVISIONS.

SUBPART 1. SHORT TITLE, DEFINITIONS, AND GENERAL CONCEPTS.

§46-9-102. Definitions and index of definitions.

*Clerk's Note: This section was amended to bring it into conformity with the newly enacted article nine, chapter forty-six, which will take effect July 1, 2001.
§46-9-103. Purchase-money security interest; application of payments; burden of establishing.

§46-9-103a. “Production-money crops”; “production-money obligation”; production-money security interest; burden of establishing.

§46-9-104. Control of deposit account.

§46-9-105. Control of electronic chattel paper.

§46-9-106. Control of investment property.

§46-9-107. Control of letter-of-credit right.


§46-9-110. Security interests arising under article two or two-a.

§46-9-201. General effectiveness of security agreement.

§46-9-202. Title to collateral immaterial.

§46-9-203. Attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites.

§46-9-204. After-acquired property; future advances.

§46-9-205. Use or disposition of collateral permissible.


§46-9-207. Rights and duties of secured party having possession or control of collateral.

§46-9-208. Additional duties of secured party having control of collateral.

§46-9-209. Duties of secured party if account debtor has been notified of assignment.

§46-9-210. Request for accounting; request regarding list of collateral or statement of account.

§46-9-301. Law governing perfection and priority of security interests.

§46-9-302. Law governing perfection and priority of agricultural liens.

§46-9-303. Law governing perfection and priority of security interests in goods covered by a certificate of title.

§46-9-304. Law governing perfection and priority of security interests in deposit accounts.

§46-9-305. Law governing perfection and priority of security interests in investment property.


§46-9-307. Location of debtor.

§46-9-308. When security interest or agricultural lien is perfected; continuity of perfection.

§46-9-309. Security interest perfected upon attachment.

§46-9-310. When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply.
§46-9-311. Perfection of security interests in property subject to certain statutes, regulations and treaties.

§46-9-312. Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights and money; perfection by permissive filing; temporary perfection without filing or transfer of possession.

§46-9-313. When possession by or delivery to secured party perfects security interest without filing.

§46-9-314. Perfection by control.

§46-9-315. Secured party’s rights on disposition of collateral and in proceeds.

§46-9-316. Continued perfection of security interest following change in governing law.

§46-9-317. Interest that take priority over or take free of security interest or agricultural lien.

§46-9-318. No interest retained in right to payment that is sold; rights and title of seller of account or chattel paper with respect to creditors and purchasers.

§46-9-319. Rights and title of cosignee with respect to creditors and purchasers.


§46-9-322. Priorities among conflicting security interests in and agricultural liens on same collateral.

§46-9-323. Future advances.


§46-9-325. Priority of security interests in transferred collateral.

§46-9-326. Priority of security interests created by new debtor.

§46-9-327. Priority of security interests in deposit account.

§46-9-328. Priority of security interests in investment property.


§46-9-330. Priority of purchaser of chattel paper or instrument.

§46-9-331. Priority of rights of purchasers of instruments, documents, and securities under other articles; priority of interests in financial assets and security entitlements under article eight.

§46-9-332. Transfer of money; transfer of funds from deposit account.

§46-9-333. Priority of certain liens arising by operation of law.


§46-9-335. Accessions.


§46-9-338. Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.
§46-9-339. Priority subject to subordination.
§46-9-340. Effectiveness of right of recoupment or set-off against deposit account.
§46-9-341. Bank’s rights and duties with respect to deposit account.
§46-9-342. Bank’s right to refuse to enter into or disclose existence of control agreement.
§46-9-401. Alienability of debtor’s rights.
§46-9-402. Secured party not obligated on contract of debtor or in tort.
§46-9-403. Agreement not to assert defenses against assignee.
§46-9-404. Rights acquired by assignee; claims and defenses against assignee.
§46-9-406. Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles and promissory notes ineffective.
§46-9-407. Restrictions on creation or enforcement of security interest in leasehold interest or in lessor’s residual interest.
§46-9-408. Restrictions on assignment of promissory notes, health-care-insurance receivables and certain general intangibles ineffective.
§46-9-502. Contents of financing statement; record of mortgage as financing statement; time of filing financing statement.
§46-9-503. Name of debtor and secured party.
§46-9-504. Indication of collateral.
§46-9-505. Filing and compliance with other statutes and treaties for consignments, leases, other bailments and other transactions.
§46-9-506. Effect of errors or omissions.
§46-9-507. Effect of certain events on effectiveness of financing statement.
§46-9-508. Effectiveness of financing statement if new debtor becomes bound by security agreement.
§46-9-509. Persons entitled to file a record.
§46-9-510. Effectiveness of filed record.
§46-9-511. Secured party of record.
§46-9-512. Amendment of financing statement.
§46-9-513. Termination statement.
§46-9-514. Assignment of powers of secured party of record.
§46-9-515. Duration and effectiveness of financing statement; effect of lapsed financing statement.
§46-9-516. What constitutes filing; effectiveness of filing.
§46-9-517. Effect of indexing errors.
§46-9-518. Claim concerning inaccurate or wrongfully filed record.
§46-9-519. Numbering, maintaining and indexing records; communicating information provided in records.
§46-9-520. Acceptance and refusal to accept record.
§46-9-521. Uniform form of written financing statement and amendment.
§46-9-523. Information from filing office; sale or license of records.
§46-9-524. Delay by filing office.
§46-9-525. Fees.
§46-9-527. Duty to report.
§46-9-601. Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles or promissory notes.
§46-9-602. Waiver and variance of rights and duties.
§46-9-603. Agreement on standards concerning rights and duties.
§46-9-604. Procedure if security agreement covers real property or fixtures.
§46-9-605. Unknown debtor or secondary obligor.
§46-9-607. Collection and enforcement by secured party.
§46-9-608. Application of proceeds of collection or enforcement; liability for deficiency and right to surplus.
§46-9-609. Secured party’s right to take possession after default.
§46-9-610. Disposition of collateral after default.
§46-9-611. Notification before disposition of collateral.
§46-9-612. Timeliness of notification before disposition of collateral.
§46-9-615. Application of proceeds of disposition; liability for deficiency and right to surplus.
§46-9-616. Explanation of calculation of surplus or deficiency.
§46-9-617. Rights of transferee of collateral.
§46-9-619. Transfer of record or legal title.
§46-9-620. Acceptance of collateral in full or partial satisfaction of obligation; compulsory disposition of collateral.
§46-9-621. Notification of proposal to accept collateral.
§46-9-622. Effect of acceptance of collateral.
§46-9-623. Right to redeem collateral.
§46-9-624. Waiver.
§46-9-625. Remedies for secured party’s failure to comply with article.
§46-9-626. Action in which deficiency or surplus is in issue.
§46-9-627. Determination of whether conduct was commercially reasonable.
§46-9-628. Nonliability and limitation on liability of secured party; liability of secondary obligor.
§46-9-701. Effective date.
§46-9-702. Savings clause.
§46-9-703. Security interest perfected before effective date.
§46-9-704. Security interest unperfected before effective date.
§46-9-705. Effectiveness of action taken before effective date.
§46-9-706. When initial financing statement suffices to continue effectiveness of financing statement.
§46-9-707. Amendment of pre-effective-date financing statement.
§46-9-708. Persons entitled to file initial financing statement or continuation statement.


This article may be cited as Uniform Commercial Code–Secured Transactions.

§46-9-102. Definitions and index of definitions.

(a) Article 9 definitions. In this article:

(1) “Accession” means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) “Account”, except as used in “account for”, means a right to payment of a monetary obligation, whether or not earned by performance: (i) For property that has been or is to be sold, leased, licensed, assigned or otherwise disposed of; (ii) for services rendered or to be rendered; (iii) for a policy of insurance issued or to be issued; (iv) for a secondary obligation incurred or to be incurred; (v) for energy provided or to be provided; (vi) for the use or hire of a vessel under a charter or other contract; (vii) arising out of the use of a credit or charge card or information contained on or for use with the card; or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables. The term does not include: (i) Rights to payment evidenced by chattel paper or an instrument; (ii) commercial tort claims; (iii) deposit accounts; (iv) investment property; (v) letter-of-credit rights or letters of credit; or (vi) rights to payment for money or funds advanced or sold, other than rights
24 arising out of the use of a credit or charge card or information
25 contained on or for use with the card.

26 (3) "Account debtor" means a person obligated on an
27 account, chattel paper or general intangible. The term does not
28 include persons obligated to pay a negotiable instrument, even
29 if the instrument constitutes part of chattel paper.

30 (4) "Accounting", except as used in “accounting for”,
31 means a record:

32 (A) Authenticated by a secured party;

33 (B) Indicating the aggregate unpaid secured obligations as
34 of a date not more than thirty-five days earlier or thirty-five
35 days later than the date of the record; and

36 (C) Identifying the components of the obligations in
37 reasonable detail.

38 (5) “Agricultural lien” means an interest, other than a
39 security interest, in farm products:

40 (A) Which secures payment or performance of an obliga-
41 tion for:

42 (i) Goods or services furnished in connection with a
43 debtor’s farming operation; or

44 (ii) Rent on real property leased by a debtor in connection
45 with its farming operation;

46 (B) Which is created by statute in favor of a person that:

47 (i) In the ordinary course of its business furnished goods or
48 services to a debtor in connection with a debtor’s farming
49 operation; or

50 (ii) Leased real property to a debtor in connection with the
51 debtor’s farming operation; and

52 (C) Whose effectiveness does not depend on the person’s
53 possession of the personal property.

54 (6) “As-extracted collateral” means:
(A) Oil, gas or other minerals that are subject to a security interest that:

(i) Is created by a debtor having an interest in the minerals before extraction; and

(ii) Attaches to the minerals as extracted; or

(B) Accounts arising out of the sale at the wellhead or minehead of oil, gas or other minerals in which the debtor had an interest before extraction.

(7) "Authenticate" means:

(A) To sign; or

(B) To execute or otherwise adopt a symbol, or encrypt or similarly process a record, in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

(8) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions and trust companies.

(9) "Cash proceeds" means proceeds that are money, checks, deposit accounts or the like.

(10) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods or a lease of specific goods and license of software used in the goods. In this paragraph, "monetary obligation" means a monetary obligation secured by the goods owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include: (i)
Charters or other contracts involving the use or hire of a vessel; or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

(A) Proceeds to which a security interest attaches;

(B) Accounts, chattel paper, payment intangibles and promissory notes that have been sold; and

(C) Goods that are the subject of a consignment.

(13) "Commercial tort claim" means a claim arising in tort with respect to which:

(A) The claimant is an organization; or

(B) The claimant is an individual and the claim:

(i) Arose in the course of the claimant’s business or profession; and

(ii) Does not include damages arising out of personal injury to or the death of an individual.

(14) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option or another contract if the contract or option is:

(A) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(B) Traded on a foreign commodity board of trade, exchange or market and is carried on the books of a commodity intermediary for a commodity customer.
(16) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.

(17) "Commodity intermediary" means a person that:

(A) Is registered as a futures commission merchant under federal commodities law; or

(B) In the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) "Communicate" means:

(A) To send a written or other tangible record;

(B) To transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) "Consignee" means a merchant to which goods are delivered in a consignment.

(20) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) The merchant:

(i) Deals in goods of that kind under a name other than the name of the person making delivery;

(ii) Is not an auctioneer; and

(iii) Is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) With respect to each delivery, the aggregate value of the goods is one thousand dollars or more at the time of delivery;
(C) The goods are not consumer goods immediately before delivery; and

(D) The transaction does not create a security interest that secures an obligation.

(21) "Consignor" means a person that delivers goods to a consignee in a consignment.

(22) "Consumer debtor" means a debtor in a consumer transaction.

(23) "Consumer goods" means goods that are used or bought for use primarily for personal, family or household purposes.

(24) "Consumer-goods transaction" means a consumer transaction in which:

(A) An individual incurs an obligation primarily for personal, family or household purposes; and

(B) A security interest in consumer goods secures the obligation.

(25) "Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family or household purposes.

(26) "Consumer transaction" means a transaction in which:

(i) An individual incurs an obligation primarily for personal, family or household purposes; (ii) a security interest secures the obligation; and (iii) the collateral is held or acquired primarily for personal, family or household purposes. The term includes consumer-goods transactions.

(27) "Continuation statement" means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and
(B) Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) "Debtor" means:

(A) A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) A seller of accounts, chattel paper, payment intangibles or promissory notes; or

(C) A consignee.

(29) "Deposit account" means a demand, time, savings, passbook or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) "Document" means a document of title or a receipt of the type described in section 7-201(2).

(31) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) "Equipment" means goods other than inventory, farm products or consumer goods.

(34) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) Crops grown, growing or to be grown, including:

(i) Crops produced on trees, vines and bushes; and

(ii) Aquatic goods produced in aquacultural operations;

(B) Livestock, born or unborn, including aquatic goods produced in aquacultural operations;
(C) Supplies used or produced in a farming operation; or
(D) Products of crops or livestock in their unmanufactured
states.

(35) "Farming operation" means raising, cultivating,
propagating, fattening, grazing or any other farming, livestock
or aquacultural operation.

(36) "File number" means the number assigned to an initial
financing statement pursuant to section 9-519(a).

(37) "Filing office" means an office designated in section
9-501 as the place to file a financing statement.

(38) "Filing-office rule" means a rule adopted pursuant to
section 9-526.

(39) "Financing statement" means a record or records
composed of an initial financing statement and any filed record
relating to the initial financing statement.

(40) "Fixture filing" means the filing of a financing
statement covering goods that are or are to become fixtures and
satisfying section 9-502(a) and (b). The term includes the filing
of a financing statement covering goods of a transmitting utility
which are or are to become fixtures.

(41) "Fixtures" means goods that have become so related to
particular real property that an interest in them arises under real
property law.

(42) "General intangible" means any personal property,
including things in action, other than accounts, chattel paper,
commercial tort claims, deposit accounts, documents, goods,
instrumem, investment property, letter-of-credit rights, letters
of credit, money and oil, gas or other minerals before extrac-
tion. The term includes payment intangibles and software.

(43) "Good faith" means honesty in fact and the observance
of reasonable commercial standards of fair dealing.

(44) "Goods" means all things that are movable when a
security interest attaches. The term includes: (i) Fixtures; (ii)
standing timber that is to be cut and removed under a convey-
ance or contract for sale; (iii) the unborn young of animals; (iv)
crops grown, growing or to be grown, even if the crops are
produced on trees, vines or bushes; and (v) manufactured
homes. The term also includes a computer program embedded
in goods and any supporting information provided in connec-
tion with a transaction relating to the program if: (i) The
program is associated with the goods in such a manner that it
customarily is considered part of the goods; or (ii) by becoming
the owner of the goods, a person acquires a right to use the
program in connection with the goods. The term does not
include a computer program embedded in goods that consist
solely of the medium in which the program is embedded. The
term also does not include accounts, chattel paper, commercial
tort claims, deposit accounts, documents, general intangibles,
instruments, investment property, letter-of-credit rights, letters
of credit, money or oil, gas, or other minerals before extraction.

(45) “Governmental unit” means a subdivision, agency,
department, county, parish, municipality or other unit of the
government of the United States, a state or a foreign country.
The term includes an organization having a separate corporate
existence if the organization is eligible to issue debt on which
interest is exempt from income taxation under the laws of the
United States.

(46) “Health-care-insurance receivable” means an interest
in or claim under a policy of insurance which is a right to
payment of a monetary obligation for health-care goods or
services provided.

(47) “Instrument” means a negotiable instrument or any
other writing that evidences a right to the payment of a mone-
tary obligation, is not itself a security agreement or lease, and
is of a type that in ordinary course of business is transferred by
delivery with any necessary indorsement or assignment. The
term does not include: (i) Investment property; (ii) letters of
credit; or (iii) writings that evidence a right to payment arising
out of the use of a credit or charge card or information con-
tained on or for use with the card.
(48) "Inventory" means goods, other than farm products, which:
(A) Are leased by a person as lessor;
(B) Are held by a person for sale or lease or to be furnished under a contract of service;
(C) Are furnished by a person under a contract of service; or
(D) Consist of raw materials, work in process or materials used or consumed in a business.

(49) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract or commodity account.

(50) "Jurisdiction of organization", with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(51) "Letter-of-credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) "Lien creditor" means:
(A) A creditor that has acquired a lien on the property involved by attachment, levy or the like;
(B) An assignee for benefit of creditors from the time of assignment;
(C) A trustee in bankruptcy from the date of the filing of the petition; or
(D) A receiver in equity from the time of appointment.

(53) "Manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length,
or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States secretary of housing and urban development and complies with the standards established under Title 42 of the United States Code.

(54) “Manufactured-home transaction” means a secured transaction:

(A) That creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(B) In which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(55) “Mortgage” means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) “New debtor” means a person that becomes bound as debtor under section 9-203(d) by a security agreement previously entered into by another person.

(57) “New value” means: (i) Money; (ii) money’s worth in property, services or new credit; or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) “Noncash proceeds” means proceeds other than cash proceeds.

(59) “Obligor” means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral: (i) Owes payment or other performance of the obligation; (ii) has provided property other than the
collateral to secure payment or other performance of the
obligation; or (iii) is otherwise accountable, in whole or in part,
for payment or other performance of the obligation. The term
does not include issuers or nominated persons under a letter of
credit.

(60) "Original debtor" except as used in section 9-310(c),
means a person that, as debtor, entered into a security agree-
ment to which a new debtor has become bound under section
9-203(d).

(61) "Payment intangible" means a general intangible under
which the account debtor's principal obligation is a monetary
obligation.

(62) "Person related to", with respect to an individual,
means:

(A) The spouse of the individual;

(B) A brother, brother-in-law, sister or sister-in-law of the
individual;

(C) An ancestor or lineal descendant of the individual or the
individual's spouse; or

(D) Any other relative, by blood or marriage, of the
individual or the individual's spouse who shares the same home
with the individual.

(63) "Person related to", with respect to an organization,
means:

(A) A person directly or indirectly controlling, controlled
by or under common control with the organization;

(B) An officer or director of, or a person performing similar
functions with respect to, the organization;

(C) An officer or director of, or a person performing similar
functions with respect to, a person described in subparagraph
(A);

(D) The spouse of an individual described in subparagraph
(A), (B) or (C); or
(E) An individual who is related by blood or marriage to an individual described in subparagraph (A), (B), (C) or (D) and shares the same home with the individual.

(64) "Proceeds", except as used in section 9-609(b), means the following property:

(A) Whatever is acquired upon the sale, lease, license, exchange or other disposition of collateral;

(B) Whatever is collected on, or distributed on account of, collateral;

(C) Rights arising out of collateral;

(D) To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral;

or

(E) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) "Production-money crops" means crops that secure a production-money obligation incurred with respect to the production of those crops.

(66) "Production-money obligation" means an obligation of an obligor incurred for new value given to enable the debtor to produce crops if the value is in fact used for the production of the crops.

(67) "Production of crops" includes tilling and otherwise preparing land for growing, planting, cultivating, fertilizing, irrigating, harvesting and gathering crops and protecting them from damage or disease.

(68) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.
419 (69) "Proposal" means a record authenticated by a secured
420 party which includes the terms on which the secured party is
421 willing to accept collateral in full or partial satisfaction of the
422 obligation it secures pursuant to sections 9-620, 9-621 and
423 9-622.
424 (70) "Public-finance transaction" means a secured transac-
425 tion in connection with which:
426 (A) Debt securities are issued;
427 (B) All or a portion of the securities issued have an initial
428 stated maturity of at least twenty years; and
429 (C) The debtor, obligor, secured party, account debtor or
430 other person obligated on collateral, assignor or assignee of a
431 secured obligation, or assignor or assignee of a security interest
432 is a state or a governmental unit of a state.
433 (71) "Pursuant to commitment", with respect to an advance
434 made or other value given by a secured party, means pursuant
435 to the secured party's obligation, whether or not a subsequent
436 event of default or other event not within the secured party’s
437 control has relieved or may relieve the secured party from its
438 obligation.
439 (72) "Record", except as used in "for record", "of record",
440 "record or legal title" and "record owner", means information
441 that is inscribed on a tangible medium or which is stored in an
442 electronic or other medium and is retrievable in perceivable
443 form.
444 (73) "Registered organization" means an organization
445 organized solely under the law of a single state or the United
446 States and as to which the state or the United States must
447 maintain a public record showing the organization to have been
448 organized.
449 (74) "Secondary obligor" means an obligor to the extent
450 that:
451 (A) The obligor’s obligation is secondary; or
(B) The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor or property of either.

(75) "Secured party" means:

(A) A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) A person that holds an agricultural lien;

(C) A consignor;

(D) A person to which accounts, chattel paper, payment intangibles or promissory notes have been sold;

(E) A trustee, indenture trustee, agent, collateral agent or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) A person that holds a security interest arising under section 2-401, 2-505, 2-711(3), 2A-508(5), 4-210 or 5-118.

(76) "Security agreement" means an agreement that creates or provides for a security interest.

(77) "Send", in connection with a record or notification, means:

(A) To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) To cause the record or notification to be received within the time that it would have been received if properly sent under paragraph (A).

(78) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.
(79) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

(80) “Supporting obligation” means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument or investment property.

(81) “Tangible chattel paper” means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(82) “Termination statement” means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(83) “Transmitting utility” means a person primarily engaged in the business of:

(A) Operating a railroad, subway, street railway or trolley bus;

(B) Transmitting communications electrically, electromagnetically or by light;

(C) Transmitting goods by pipeline or sewer; or

(D) Transmitting or producing and transmitting electricity, steam, gas, or water.

(b) Definitions in other articles. The following definitions in other articles apply to this article:

“Applicant” Section 5-102.

“Beneficiary” Section 5-102.

“Broker” Section 8-102.
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§46-9-103. Purchase-money security interest; application of payments; burden of establishing.

(a) Definitions. In this section:

(1) “Purchase-money collateral” means goods or software that secures a purchase-money obligation incurred with respect to that collateral; and

(2) “Purchase-money obligation” means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.

(b) Purchase-money security interest in goods. A security interest in goods is a purchase-money security interest:

(1) To the extent that the goods are purchase-money collateral with respect to that security interest;

(2) If the security interest is in inventory that is or was purchase-money collateral, also to the extent that the security interest secures a purchase-money obligation incurred with respect to other inventory in which the secured party holds or held a purchase-money security interest; and

(3) Also to the extent that the security interest secures a purchase-money obligation incurred with respect to software in
which the secured party holds or held a purchase-money
security interest.

(c) **Purchase-money security interest in software.** A
security interest in software is a purchase-money security
interest to the extent that the security interest also secures a
purchase-money obligation incurred with respect to goods in
which the secured party holds or held a purchase-money
security interest if:

(1) The debtor acquired its interest in the software in an
integrated transaction in which it acquired an interest in the
goods; and

(2) The debtor acquired its interest in the software for the
principal purpose of using the software in the goods.

(d) **Consignor’s inventory purchase-money security
interest.** The security interest of a consignor in goods that are
the subject of a consignment is a purchase-money security
interest in inventory.

(e) **Application of payment in non-consumer-goods
transaction.** In a transaction other than a consumer-goods
transaction, if the extent to which a security interest is a
purchase-money security interest depends on the application of
a payment to a particular obligation, the payment must be
applied:

(1) In accordance with any reasonable method of applica-
tion to which the parties agree;

(2) In the absence of the parties’ agreement to a reasonable
method, in accordance with any intention of the obligor
manifested at or before the time of payment; or

(3) In the absence of an agreement to a reasonable method
and a timely manifestation of the obligor’s intention, in the
following order:

(A) To obligations that are not secured; and
(B) If more than one obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred.

(f) **No loss of status of purchase-money security interest in non-consumer-goods transaction.** In a transaction other than a consumer-goods transaction, a purchase-money security interest does not lose its status as such, even if:

1. The purchase-money collateral also secures an obligation that is not a purchase-money obligation;
2. Collateral that is not purchase-money collateral also secures the purchase-money obligation; or
3. The purchase-money obligation has been renewed, refinanced, consolidated or restructured.

(g) **Burden of proof in non-consumer-goods transaction.** In a transaction other than a consumer-goods transaction, a secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest.

(h) **Non-consumer-goods transactions; no inference.** The limitation of the rules in subsections (e), (f) and (g) of this section to transactions other than consumer-goods transactions is intended to leave to the court the determination of the proper rules in consumer-goods transactions. The court may not infer from that limitation the nature of the proper rule in consumer-goods transactions and may continue to apply established approaches.

§46-9-103a. **“Production-money crops”; “production-money obligation”; production-money security interest; burden of establishing.**

(a) A security interest in crops is a production-money security interest to the extent that the crops are production-money crops.
(b) If the extent to which a security interest is a production-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:

1. In accordance with any reasonable method of application to which the parties agree;
2. In the absence of the parties' agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment; or
3. In the absence of an agreement to a reasonable method and a timely manifestation of the obligor's intention, in the following order:
   A. To obligations that are not secured; and
   B. If more than one obligation is secured, to obligations secured by production-money security interests in the order in which those obligations were incurred.

(c) A production-money security interest does not lose its status as such, even if:

1. The production-money crops also secure an obligation that is not a production-money obligation;
2. Collateral that is not production-money crops also secures the production-money obligation; or
3. The production-money obligation has been renewed, refinanced, or restructured.

(d) A secured party claiming a production-money security interest has the burden of establishing the extent to which the security interest is a production-money security interest.

§46-9-104. Control of deposit account.

(a) Requirements for control. A secured party has control of a deposit account if:

1. The secured party is the bank with which the deposit account is maintained;
(2) The debtor, secured party and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; or

(3) The secured party becomes the bank’s customer with respect to the deposit account.

(b) Debtor’s right to direct disposition. A secured party that has satisfied subsection (a) has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

§46-9-105. Control of electronic chattel paper.

A secured party has control of electronic chattel paper if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

(1) A single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in paragraphs (4), (5) and (6) of this section, unalterable;

(2) The authoritative copy identifies the secured party as the assignee of the record or records;

(3) The authoritative copy is communicated to and maintained by the secured party or its designated custodian;

(4) Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the participation of the secured party;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any revision of the authoritative copy is readily identifiable as an authorized or unauthorized revision.

§46-9-106. Control of investment property.
(a) Control under section 8-106. A person has control of a certificated security, uncertificated security, or security entitlement as provided in section 8-106.

(b) Control of commodity contract. A secured party has control of a commodity contract if:

(1) The secured party is the commodity intermediary with which the commodity contract is carried; or

(2) The commodity customer, secured party and commodity intermediary have agreed that the commodity intermediary will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer.

(c) Effect of control of securities account or commodity account. A secured party having control of all security entitlements or commodity contracts carried in a securities account or commodity account has control over the securities account or commodity account.

§46-9-107. Control of letter-of-credit right.

A secured party has control of a letter-of-credit right to the extent of any right to payment or performance by the issuer or any nominated person if the issuer or nominated person has consented to an assignment of proceeds of the letter of credit under section 5-114(c) or otherwise applicable law or practice.


(a) Sufficiency of description. Except as otherwise provided in subsections (c), (d) and (e) of this section, a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.

(b) Examples of reasonable identification. Except as otherwise provided in subsection (d), a description of collateral reasonably identifies the collateral if it identifies the collateral by:

(1) Specific listing;
(2) Category;

(3) Except as otherwise provided in subsection (e) of this section, a type of collateral defined in the Uniform Commercial Code;

(4) Quantity;

(5) Computational or allocational formula or procedure; or

(6) Except as otherwise provided in subsection (c), any other method, if the identity of the collateral is objectively determinable.

(c) Supergeneric description not sufficient. A description of collateral as “all the debtor’s assets” or “all the debtor’s personal property” or using words of similar import does not reasonably identify the collateral.

(d) Investment property. Except as otherwise provided in subsection (e), a description of a security entitlement, securities account or commodity account is sufficient if it describes:

(1) The collateral by those terms or as investment property; or

(2) The underlying financial asset or commodity contract.

(e) When description by type insufficient. A description only by type of collateral defined in the Uniform Commercial Code is an insufficient description of:

(1) A commercial tort claim; or

(2) In a consumer transaction, consumer goods, a security entitlement, a securities account or a commodity account.
(2) An agricultural lien;

(3) A sale of accounts, chattel paper, payment intangibles or promissory notes;

(4) A consignment;

(5) A security interest arising under section 2-401, 2-505, 2-711(3) or 2A-508(5) as provided in section 9-110; and

(6) A security interest arising under section 4-210 or 5-118.

(b) Security interest in secured obligation. The application of this article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this article does not apply.

(c) Extent to which article does not apply. This article does not apply to the extent that:

(1) A statute, regulation or treaty of the United States preempts this article;

(2) Another statute of this state expressly governs the creation, perfection, priority or enforcement of a security interest created by this state or a governmental unit of this state;

(3) A statute of another state, a foreign country or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority or enforcement of a security interest created by the state, country or governmental unit; or

(4) The rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under section 5-114.

(d) Inapplicability of article. This article does not apply to:

(1) A landlord’s lien, other than an agricultural lien;
35 (2) A lien, other than an agricultural lien, given by statute
36 or other rule of law for services or materials, but section 9-333
37 applies with respect to priority of the lien;
38
39 (3) An assignment of a claim for wages, salary or other
40 compensation of an employee;
41
42 (4) A sale of accounts, chattel paper, payment intangibles
43 or promissory notes as part of a sale of the business out of
44 which they arose;
45
46 (5) An assignment of accounts, chattel paper, payment
47 intangibles or promissory notes which is for the purpose of
48 collection only;
49
50 (6) An assignment of a right to payment under a contract to
51 an assignee that is also obligated to perform under the contract;
52
53 (7) An assignment of a single account, payment intangible
54 or promissory note to an assignee in full or partial satisfaction
55 of a preexisting indebtedness;
56
57 (8) A transfer of an interest in or an assignment of a claim
58 under a policy of insurance, other than an assignment by or to
59 a health-care provider of a health-care-insurance receivable and
60 any subsequent assignment of the right to payment, but sections
61 9-315 and 9-322 apply with respect to proceeds and priorities
62 in proceeds;
63
64 (9) An assignment of a right represented by a judgment,
65 other than a judgment taken on a right to payment that was
66 collateral;
67
68 (10) A right of recoupment or set-off, but:
69
70 (A) Section 9-340 applies with respect to the effectiveness
71 of rights of recoupment or set-off against deposit accounts; and
72
73 (B) Section 9-404 applies with respect to defenses or claims
74 of an account debtor;
75
76 (11) The creation or transfer of an interest in or lien on real
77 property, including a lease or rents thereunder, except to the
78 extent that provision is made for:
§46-9-110. Security interests arising under article two or two-a.

A security interest arising under section 2-401, 2-505, 2-711(3) or 2A-508(5) is subject to this article. However, until the debtor obtains possession of the goods:

1. The security interest is enforceable, even if section 9-203(b)(3) has not been satisfied;
2. Filing is not required to perfect the security interest;
3. The rights of the secured party after default by the debtor are governed by article two or two-a; and
4. The security interest has priority over a conflicting security interest created by the debtor.

PART 2. EFFECTIVENESS OF SECURITY AGREEMENT; ATTACHMENT OF SECURITY INTEREST; RIGHTS OF PARTIES TO SECURITY AGREEMENT.

SUBPART 1. EFFECTIVENESS AND ATTACHMENT.

§46-9-201. General effectiveness of security agreement.

(a) General effectiveness. Except as otherwise provided in the Uniform Commercial Code, a security agreement is
effective according to its terms between the parties, against purchasers of the collateral, and against creditors.

(b) Applicable consumer laws and other law. A transaction subject to this article is subject to any applicable rule of law which establishes a different rule for consumers, to any other statute or regulation of this state that regulates the rates, charges, agreements, and practices for loans, credit sales or other extensions of credit, and to any consumer-protection statute or regulation of this state.

(c) Other applicable law controls. In case of conflict between this article and a rule of law, statute or regulation described in subsection (b) of this section, the rule of law, statute or regulation controls. Failure to comply with a statute or regulation described in subsection (b) of this section has only the effect the statute or regulation specifies.

(d) Further deference to other applicable law. This article does not:

(1) Validate any rate, charge, agreement or practice that violates a rule of law, statute or regulation described in subsection (b) of this section; or

(2) Extend the application of the rule of law, statute, or regulation to a transaction not otherwise subject to it.

§46-9-202. Title to collateral immaterial.

Except as otherwise provided with respect to consignments or sales of accounts, chattel paper, payment intangibles or promissory notes, the provisions of this article with regard to rights and obligations apply whether title to collateral is in the secured party or the debtor.

§46-9-203. Attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites.

(a) Attachment. A security interest attaches to collateral when it becomes enforceable against the debtor with respect to
the collateral, unless an agreement expressly postpones the time
of attachment.

(b) **Enforceability.** Except as otherwise provided in
subsections (c) through (i), inclusive, of this section, a security
interest is enforceable against the debtor and third parties with
respect to the collateral only if:

(1) Value has been given;

(2) The debtor has rights in the collateral or the power to
transfer rights in the collateral to a secured party; and

(3) One of the following conditions is met:

(A) The debtor has authenticated a security agreement that
provides a description of the collateral and, if the security
interest covers timber to be cut, a description of the land
concerned;

(B) The collateral is not a certificated security and is in the
possession of the secured party under section 9-313 pursuant to
the debtor’s security agreement;

(C) The collateral is a certificated security in registered
form and the security certificate has been delivered to the
secured party under section 8-301 pursuant to the debtor’s
security agreement; or

(D) The collateral is deposit accounts, electronic chattel
paper, investment property or letter-of-credit rights, and the
secured party has control under section 9-104, 9-105, 9-106 or
9-107 pursuant to the debtor’s security agreement.

(c) **Other UCC provisions.** Subsection (b) of this section
is subject to section 4-210 on the security interest of a collect-
ing bank, section 5-118 on the security interest of a letter-of-
credit issuer or nominated person, section 9-110 on a security
interest arising under article two or two-a of this chapter and
section 9-206 on security interests in investment property.

(d) **When person becomes bound by another person’s
security.** A person becomes bound as debtor by a security
agreement entered into by another person if, by operation of law other than this article or by contract:

(1) The security agreement becomes effective to create a security interest in the person’s property; or

(2) The person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(e) Effect of new debtor becoming bound. If a new debtor becomes bound as debtor by a security agreement entered into by another person:

(1) The agreement satisfies subsection (b)(3) of this section with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and

(2) Another agreement is not necessary to make a security interest in the property enforceable.

(f) Proceeds and supporting obligations. The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by section 9-315 and is also attachment of a security interest in a supporting obligation for the collateral.

(g) Lien securing right to payment. The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage or other lien.

(h) Security entitlement carried in securities account. The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(i) Commodity contracts carried in commodity account. The attachment of a security interest in a commodity account is
§46-9-204. After-acquired property; future advances.

(a) After-acquired collateral. Except as otherwise provided in subsection (b), a security agreement may create or provide for a security interest in after-acquired collateral.

(b) When after-acquired property clause not effective. A security interest does not attach under a term constituting an after-acquired property clause to:

(1) Consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within ten days after the secured party gives value; or

(2) A commercial tort claim.

(c) Future advances and other value. A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles or promissory notes are sold in connection with, future advances or other value, whether or not the advances or value are given pursuant to commitment.

§46-9-205. Use or disposition of collateral permissible.

(a) When security interest not invalid or fraudulent. A security interest is not invalid or fraudulent against creditors solely because:

(1) The debtor has the right or ability to:

(A) Use, commingle or dispose of all or part of the collateral, including returned or repossessed goods;

(B) Collect, compromise, enforce or otherwise deal with collateral;

(C) Accept the return of collateral or make repossessions; or

(D) Use, commingle or dispose of proceeds; or

(2) The secured party fails to require the debtor to account for proceeds or replace collateral.
(b) Requirements of possession not relaxed. This section does not relax the requirements of possession if attachment, perfection or enforcement of a security interest depends upon possession of the collateral by the secured party.


(a) Security interest when person buys through securities intermediary. A security interest in favor of a securities intermediary attaches to a person’s security entitlement if:

1. The person buys a financial asset through the securities intermediary in a transaction in which the person is obligated to pay the purchase price to the securities intermediary at the time of the purchase; and
2. The securities intermediary credits the financial asset to the buyer’s securities account before the buyer pays the securities intermediary.

(b) Security interest secures obligation to pay for financial asset. The security interest described in subsection (a) secures the person’s obligation to pay for the financial asset.

(c) Security interest in payment against delivery transaction. A security interest in favor of a person that delivers a certificated security or other financial asset represented by a writing attaches to the security or other financial asset if:

1. The security or other financial asset:
   A. In the ordinary course of business is transferred by delivery with any necessary indorsement or assignment; and
   B. Is delivered under an agreement between persons in the business of dealing with such securities or financial assets; and
2. The agreement calls for delivery against payment.

(d) Security interest secures obligation to pay for delivery. The security interest described in subsection (c) of this section secures the obligation to make payment for the delivery.
§46-9-207. Rights and duties of secured party having possession or control of collateral.

(a) Duty of care when secured party in possession. Except as otherwise provided in subsection (d), a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(b) Expenses, risks, duties and rights when secured party in possession. Except as otherwise provided in subsection (d), if a secured party has possession of collateral:

1. Reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;

2. The risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;

3. The secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

4. The secured party may use or operate the collateral:
   (A) For the purpose of preserving the collateral or its value;
   (B) As permitted by an order of a court having competent jurisdiction; or
   (C) Except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(c) Duties and rights when secured party in possession or control. Except as otherwise provided in subsection (d) of this section, a secured party having possession of collateral or control of collateral under section 9-104, 9-105, 9-106 or 9-107:

1. May hold as additional security any proceeds, except money or funds, received from the collateral;
(2) Shall apply money or funds received from the collateral
to reduce the secured obligation, unless remitted to the debtor;
and
(3) May create a security interest in the collateral.

(d) **Buyer of certain rights to payment.** If the secured
party is a buyer of accounts, chattel paper, payment intangibles,
or promissory notes or a consignor:

1. Subsection (a) of this section does not apply unless the
secured party is entitled under an agreement:
   A. To charge back uncollected collateral; or
   B. Otherwise to full or limited recourse against the debtor
   or a secondary obligor based on the nonpayment or other
default of an account debtor or other obligor on the collateral;

2. Subsections (b) and (c) of this section do not apply.

§46-9-208. **Additional duties of secured party having control of**
collateral.

(a) **Applicability of section.** This section applies to cases
in which there is no outstanding secured obligation and the
secured party is not committed to make advances, incur
obligations, or otherwise give value.

(b) **Duties of secured party after receiving demand from**
debtor. Within ten days after receiving an authenticated
demand by the debtor:

1. A secured party having control of a deposit account
under section 9-104(a)(2) shall send to the bank with which the
deposit account is maintained an authenticated statement that
releases the bank from any further obligation to comply with
instructions originated by the secured party;

2. A secured party having control of a deposit account
under section 9-104(a)(3) shall:

   A. Pay the debtor the balance on deposit in the deposit
account; or
(B) Transfer the balance on deposit into a deposit account in the debtor's name;

(3) A secured party, other than a buyer, having control of electronic chattel paper under section 9-105 shall:

(A) Communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;

(B) If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor;

(C) Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;

(4) A secured party having control of investment property under section 8-106(d)(2) or 9-106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party; and

(5) A secured party having control of a letter-of-credit right under section 9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party.

§46-9-209. Duties of secured party if account debtor has been notified of assignment.
(a) **Applicability of section.** Except as otherwise provided in subsection (c), this section applies if:

(1) There is no outstanding secured obligation; and

(2) The secured party is not committed to make advances, incur obligations or otherwise give value.

(b) **Duties of secured party after receiving demand from debtor.** Within ten days after receiving an authenticated demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee under section 9-406(a) an authenticated record that releases the account debtor from any further obligation to the secured party.

(c) **Inapplicability to sales.** This section does not apply to an assignment constituting the sale of an account, chattel paper or payment intangible.

§46-9-210. **Request for accounting; request regarding list of collateral or statement of account.**

(a) **Definitions.** In this section:

(1) “Request” means a record of a type described in paragraph (2), (3) or (4) of this subsection.

(2) “Request for an accounting” means a record authenticated by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.

(3) “Request regarding a list of collateral” means a record authenticated by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.

(4) “Request regarding a statement of account” means a record authenticated by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations
secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.

(b) **Duty to respond to requests.** Subject to subsections (c), (d), (e) and (f) of this section, a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request within fourteen days after receipt:

(1) In the case of a request for an accounting, by authenticating and sending to the debtor an accounting; and

(2) In the case of a request regarding a list of collateral or a request regarding a statement of account, by authenticating and sending to the debtor an approval or correction.

(c) **Request regarding list of collateral; statement concerning type of collateral.** A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor an authenticated record including a statement to that effect within fourteen days after receipt.

(d) **Request regarding list of collateral; no interest claimed.** A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request and claimed an interest in the collateral at an earlier time shall comply with the request within fourteen days after receipt by sending to the debtor an authenticated record:

(1) Disclaiming any interest in the collateral; and

(2) If known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient’s interest in the collateral.

(e) **Request for accounting or regarding statement of account; no interest in obligation claimed.** A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request and claimed an interest in the obligations
53 at an earlier time shall comply with the request within fourteen
54 days after receipt by sending to the debtor an authenticated
55 record:

56 (1) Disclaiming any interest in the obligations; and

57 (2) If known to the recipient, providing the name and
58 mailing address of any assignee of or successor to the recipi-
59 ent’s interest in the obligations.

60 (f) Charges for responses. A debtor is entitled without
61 charge to one response to a request under this section during
62 any six-month period. The secured party may require payment
63 of a charge not exceeding twenty-five dollars for each addi-
64 tional response.

PART 3. PERFECTION AND PRIORITY.

SUBPART 1. LAW GOVERNING
PERFECTION AND PRIORITY.

§46-9-301. Law governing perfection and priority of security
interests.

1 Except as otherwise provided in sections 9-303 through
2 9-306, the following rules determine the law governing perfec-
3 tion, the effect of perfection or nonperfection and the priority of
4 a security interest in collateral:

5 (1) Except as otherwise provided in this section, while a
6 debtor is located in a jurisdiction, the local law of that jurisdic-
7 tion governs perfection, the effect of perfection or
8 nonperfection, and the priority of a security interest in collateral.

9 (2) While collateral is located in a jurisdiction, the local law
10 of that jurisdiction governs perfection, the effect of perfection
11 or nonperfection, and the priority of a possessory security
12 interest in that collateral.

13 (3) Except as otherwise provided in paragraph (4) of this
14 section, while negotiable documents, goods, instruments,
15 money or tangible chattel paper is located in a jurisdiction, the
16 local law of that jurisdiction governs:
(A) Perfection of a security interest in the goods by filing a fixture filing;

(B) Perfection of a security interest in timber to be cut; and

(C) The effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

§46-9-302. Law governing perfection and priority of agricultural liens.

While farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on the farm products.

§46-9-303. Law governing perfection and priority of security interests in goods covered by a certificate of title.

(a) Applicability of section. This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.

(b) When goods covered by certificate of title. Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.

(c) Applicable law. The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certifi-
cate of title until the goods cease to be covered by the certifi-
cate of title.

§46-9-304. Law governing perfection and priority of security interests in deposit accounts.

(a) The local law of a bank’s jurisdiction governs perfec-
tion, the effect of perfection or nonperfection, and the priority
of a security interest in a deposit account maintained with that
bank.

(b) Bank’s jurisdiction. The following rules determine a
bank’s jurisdiction for purposes of this part:

(1) If an agreement between the bank and the debtor
governing the deposit account expressly provides that a
particular jurisdiction is the bank’s jurisdiction for purposes of
this part, this article, or the Uniform Commercial Code, that
jurisdiction is the bank’s jurisdiction.

(2) If paragraph (1) of this subsection does not apply and an
agreement between the bank and its customer governing the
deposit account expressly provides that the agreement is
governed by the law of a particular jurisdiction, that jurisdiction
is the bank’s jurisdiction.

(3) If neither paragraph (1) nor paragraph (2) of this
subsection applies and an agreement between the bank and its
customer governing the deposit account expressly provides that
the deposit account is maintained at an office in a particular
jurisdiction, that jurisdiction is the bank’s jurisdiction.

(4) If none of the preceding paragraphs applies, the bank’s
jurisdiction is the jurisdiction in which the office identified in
an account statement as the office serving the customer’s
account is located.

(5) If none of the preceding paragraphs applies, the bank’s
jurisdiction is the jurisdiction in which the chief executive
office of the bank is located.

§46-9-305. Law governing perfection and priority of security interests in investment property.
(a) **Governing law: general rules.** Except as otherwise provided in subsection (c) of this section, the following rules apply:

1. While a security certificate is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby.

2. The local law of the issuer's jurisdiction as specified in section 8-110(d) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security.

3. The local law of the securities intermediary's jurisdiction as specified in section 8-110(e) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account.

4. The local law of the commodity intermediary's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account.

(b) **Commodity intermediary's jurisdiction.** The following rules determine a commodity intermediary's jurisdiction for purposes of this part:

1. If an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that a particular jurisdiction is the commodity intermediary's jurisdiction for purposes of this part, this article, or the Uniform Commercial Code, that jurisdiction is the commodity intermediary's jurisdiction.

2. If paragraph (1) of this subsection does not apply and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.
(3) If neither paragraph (1) nor paragraph (2) of this subsection applies and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(4) If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the commodity customer's account is located.

(5) If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction is the jurisdiction in which the chief executive office of the commodity intermediary is located.

(c) When perfection governed by law of jurisdiction when debtor located. The local law of the jurisdiction in which the debtor is located governs:

(1) Perfection of a security interest in investment property by filing;

(2) Automatic perfection of a security interest in investment property created by a broker or securities intermediary; and

(3) Automatic perfection of a security interest in a commodity contract or commodity account created by a commodity intermediary.


(a) Governing law: issuer's or nominated person's jurisdiction. Subject to subsection (c) of this section, the local law of the issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a letter-of-credit right if the issuer's jurisdiction or nominated person's jurisdiction is a state.
(b) **Issuer’s or nominated person’s jurisdiction.** For purposes of this part, an issuer’s jurisdiction or nominated person’s jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated person with respect to the letter-of-credit right as provided in section 5-116.

(c) **When section not applicable.** This section does not apply to a security interest that is perfected only under section 9-308(d).

§46-9-307. Location of debtor.

(a) **“Place of business.”** In this section, “place of business” means a place where a debtor conducts its affairs.

(b) **Debtor’s location: general rules.** Except as otherwise provided in this section, the following rules determine a debtor’s location:

(1) A debtor who is an individual is located at the individual’s principal residence.

(2) A debtor that is an organization and has only one place of business is located at its place of business.

(3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(c) **Limitation of applicability of subsection (b).** Subsection (b) of this section applies only if a debtor’s residence, place of business or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording or registration system as a condition or result of the security interest’s obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (b) does not apply, the debtor is located in the District of Columbia.

(d) **Continuation of location: cessation of existence, etc.** A person that ceases to exist, have a residence or have a place of business continues to be located in the jurisdiction specified by subsections (b) and (c) of this section.
(e) Location of registered organization organized under state law. A registered organization that is organized under the law of a state is located in that state.

(f) Location of registered organization organized under federal law; bank branches and agencies. Except as otherwise provided in subsection (i) of this section, a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located:

(1) In the state that the law of the United States designates, if the law designates a state of location;

(2) In the state that the registered organization, branch or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location; or

(3) In the District of Columbia, if neither paragraph (1) nor paragraph (2) of this subsection applies.

(g) Continuation of location: changed in status of registered organization. A registered organization continues to be located in the jurisdiction specified by subsection (e) or (f) notwithstanding:

(1) The suspension, revocation, forfeiture or lapse of the registered organization’s status as such in its jurisdiction of organization; or

(2) The dissolution, winding up or cancellation of the existence of the registered organization.

(h) Location of United States. The United States is located in the District of Columbia.

(i) Location of foreign bank branch or agency if licensed in only one state. A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one state.
(j) **Location of foreign air carrier.** A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(k) **Section applies only to this part.** This section applies only for purposes of this part.

### §46-9-308. When security interest or agricultural lien is perfected; continuity of perfection.

(a) **Perfection of security interest.** Except as otherwise provided in this section and section 9-309, a security interest is perfected if it has attached and all of the applicable requirements for perfection in sections 9-310 through 9-316 have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

(b) **Perfection of agricultural lien.** An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in section 9-310 have been satisfied. An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective.

(c) **Continuous perfection; perfection by different methods.** A security interest or agricultural lien is perfected continuously if it is originally perfected by one method under this article and is later perfected by another method under this article, without an intermediate period when it was unperfected.

(d) **Supporting obligation.** Perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral.

(e) **Lien securing right to payment.** Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage or other lien on personal or real property securing the right.
(f) Security entitlement carried in securities account. Perfection of a security interest in a securities account also perfects a security interest in the security entitlements carried in the securities account.

(g) Commodity contract carried in commodity account. Perfection of a security interest in a commodity account also perfects a security interest in the commodity contracts carried in the commodity account.

§46-9-309. Security interest perfected upon attachment.

The following security interests are perfected when they attach:

1. A purchase-money security interest in consumer goods, except as otherwise provided in section 9-311(b) with respect to consumer goods that are subject to a statute or treaty described in section 9-311(a);

2. An assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles;

3. A sale of a payment intangible;

4. A sale of a promissory note;

5. A security interest created by the assignment of a health-care-insurance receivable to the provider of the health-care goods or services;

6. A security interest arising under section 2-401, 2-505, 2-711(3) or 2A-508(5), until the debtor obtains possession of the collateral;

7. A security interest of a collecting bank arising under section 4-210;

8. A security interest of an issuer or nominated person arising under section 5-118;

9. A security interest arising in the delivery of a financial asset under section 9-206(c);
(10) A security interest in investment property created by a broker or securities intermediary;

(11) A security interest in a commodity contract or a commodity account created by a commodity intermediary;

(12) An assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder; and

(13) A security interest created by an assignment of a beneficial interest in a decedent’s estate.

§46-9-310. When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply.

(a) **General rule: perfection by filing.** Except as otherwise provided in subsection (b) of this section and section 9-312(b), a financing statement must be filed to perfect all security interests and agricultural liens.

(b) **Exceptions: filing not necessary.** The filing of a financing statement is not necessary to perfect a security interest:

(1) That is perfected under section 9-308(d), (e), (f) or (g);

(2) That is perfected under section 9-309 when it attaches;

(3) In property subject to a statute, regulation or treaty described in section 9-311(a);

(4) In goods in possession of a bailee which is perfected under section 9-312(d)(1) or (2);

(5) In certificated securities, documents, goods or instruments which is perfected without filing or possession under section 9-312(e), (f) or (g);

(6) In collateral in the secured party’s possession under section 9-313;
(7) In a certificated security which is perfected by delivery of the security certificate to the secured party under section 9-313;

(8) In deposit accounts, electronic chattel paper, investment property or letter-of-credit rights which is perfected by control under section 9-314;

(9) In proceeds which is perfected under section 9-315; or

(10) That is perfected under section 9-316.

(c) Assignment of perfected security interest. If a secured party assigns a perfected security interest or agricultural lien, a filing under this article is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

§46-9-311. Perfection of security interests in property subject to certain statutes, regulations and treaties.

(a) Security interest subject to other law. Except as otherwise provided in subsection (d) of this section, the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) A statute, regulation or treaty of the United States whose requirements for a security interest’s obtaining priority over the rights of a lien creditor with respect to the property preempt section 9-310(a);

(2) The following statute of this state: Chapter seventeen-a of this code: Provided, That during any period in which collateral is inventory: (i) Held for sale by a person who is in the business of selling goods of that kind; or (ii) held for lease by a vehicle rental agency or similar person engaged solely in the business of leasing vehicles, the filing provision of this article apply to a security interest in that collateral created by such person as a debtor or obligor, as appropriate; or

(3) A certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest’s
obtaining priority over the rights of a lien creditor with respect to the property.

(b) **Compliance with other law.** Compliance with the requirements of a statute, regulation or treaty described in subsection (a) of this section for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this article. Except as otherwise provided in subsection (d) of this section and sections 9-313 and 9-316(d) and (e) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation or treaty described in subsection (a) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) **Duration and renewal of perfection.** Except as otherwise provided in subsection (d) of this section and section 9-316(d) and (e), duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation or treaty described in subsection (a) are governed by the statute, regulation or treaty. In other respects, the security interest is subject to this article.

(d) **Inapplicability to certain inventory.** During any period in which collateral subject to a statute specified in subsection (a)(2) of this section is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person.

§46-9-312. Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights and money; perfection by permissive filing; temporary perfection without filing or transfer of possession.
(a) **Perfection by filing permitted.** A security interest in chattel paper, negotiable documents, instruments or investment property may be perfected by filing.

(b) **Control or possession of certain collateral.** Except as otherwise provided in section 9-315(c) and (d) for proceeds:

1. A security interest in a deposit account may be perfected only by control under section 9-314; and
2. Except as otherwise provided in section 9-308(d), a security interest in a letter-of-credit right may be perfected only by control under section 9-314; and
3. A security interest in money may be perfected only by the secured party’s taking possession under section 9-313.

(c) **Goods covered by negotiable document.** While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

1. A security interest in the goods may be perfected by perfecting a security interest in the document; and
2. A security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) **Goods covered by nonnegotiable document.** While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

1. Issuance of a document in the name of the secured party;
2. The bailee’s receipt of notification of the secured party’s interest; or
3. Filing as to the goods.

(e) **Temporary perfection: new value.** A security interest in certificated securities, negotiable documents or instruments is perfected without filing or the taking of possession for a period of twenty days from the time it attaches to the extent that
it arises for new value given under an authenticated security agreement.

(f) **Temporary perfection: goods or documents made available to debtor.** A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for twenty days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

1. Ultimate sale or exchange; or
2. Loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) **Temporary perfection: delivery of security certificate or instrument to debtor.** A perfected security interest in a certificated security or instrument remains perfected for twenty days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

1. Ultimate sale or exchange; or
2. Presentation, collection, enforcement, renewal or registration of transfer.

(h) **Expiration of temporary perfection.** After the twenty-day period specified in subsection (e), (f) or (g) of this section expires, perfection depends upon compliance with this article.

§46-9-313. When possession by or delivery to secured party perfects security interest without filing.

(a) **Perfection by possession or delivery.** Except as otherwise provided in subsection (b) of this section, a secured party may perfect a security interest in negotiable documents, goods, instruments, money or tangible chattel paper by taking possession of the collateral. A secured party may perfect a
security interest in certificated securities by taking delivery of
the certificated securities under section 8-301.

(b) Goods covered by certificate of title. With respect to
goods covered by a certificate of title issued by this state, a
secured party may perfect a security interest in the goods by
taking possession of the goods only in the circumstances
described in section 9-316(d).

(c) Collateral in possession of person other than debtor.
With respect to collateral other than certificated securities and
goods covered by a document, a secured party takes possession
of collateral in the possession of a person other than the debtor,
the secured party or a lessee of the collateral from the debtor in
the ordinary course of the debtor's business, when:

(1) The person in possession authenticates a record ac-
knowledging that it holds possession of the collateral for the
secured party's benefit; or

(2) The person takes possession of the collateral after
having authenticated a record acknowledging that it will hold
possession of collateral for the secured party's benefit.

(d) Time of perfection by possession; continuation of
perfection. If perfection of a security interest depends upon
possession of the collateral by a secured party, perfection
occurs no earlier than the time the secured party takes posses-
sion and continues only while the secured party retains posses-

(e) Time of perfection by delivery; continuation of
perfection. A security interest in a certificated security in
registered form is perfected by delivery when delivery of the
certificated security occurs under section 8-301 and remains
perfected by delivery until the debtor obtains possession of the
security certificate.

(f) Acknowledgment not required. A person in possession
of collateral is not required to acknowledge that it holds
possession for a secured party's benefit.
40  (g) Effectiveness of acknowledgment; no duties or confirmation. If a person acknowledges that it holds possession for the secured party's benefit:
41  (1) The acknowledgment is effective under subsection (c) of this section or section 8-301(a), even if the acknowledgment
42  violates the rights of a debtor; and
43  (2) Unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any
44  duty to the secured party and is not required to confirm the acknowledgment to another person.

(h) Secured party's delivery to person other than debtor. A secured party having possession of collateral does not
relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the
debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed
contemporaneously with the delivery:

1  (1) Effect of delivery under subsection (h); no duties or confirmation. To hold possession of the collateral for the
secured party's benefit; or
2  (2) To redeliver the collateral to the secured party.

(i) A secured party does not relinquish possession, even if a delivery under subsection (h) of this section violates the
rights of a debtor. A person to which collateral is delivered under subsection (h) of this section does not owe any duty to
the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other
than this article otherwise provides.

§46-9-314. Perfection by control.

1  (a) Perfection by control. A security interest in investment property, deposit accounts, letter-of-credit rights or electronic
2  chattel paper may be perfected by control of the collateral under section 9-104, 9-105, 9-106 or 9-107.
(b) Specified collateral: time of perfection by control; continuation of perfection. A security interest in deposit accounts, electronic chattel paper or letter-of-credit rights is perfected by control under section 9-104, 9-105 or 9-107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) Investment property: time of perfection by control; continuation of perfection. A security interest in investment property is perfected by control under section 9-106 from the time the secured party obtains control and remains perfected by control until:

1. The secured party does not have control; and
2. One of the following occurs:
   A. If the collateral is a certificated security, the debtor has or acquires possession of the security certificate;
   B. If the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or
   C. If the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

§46-9-315. Secured party’s rights on disposition of collateral and in proceeds.

(a) Disposition of collateral: continuation of security interest or agricultural lien; proceeds. Except as otherwise provided in this article and in section 2-403(2):
1. A security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and
2. A security interest attaches to any identifiable proceeds of collateral.

(b) When commingled proceeds identifiable. Proceeds that are commingled with other property are identifiable proceeds:
(1) If the proceeds are goods, to the extent provided by section 9-336; and

(2) If the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this article with respect to commingled property of the type involved.

(c) **Perfection of security interest in proceeds.** A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

(d) **Continuation of perfection.** A perfected security interest in proceeds becomes unperfected on the twenty-first day after the security interest attaches to the proceeds unless:

(1) The following conditions are satisfied:

(A) A filed financing statement covers the original collateral;

(B) The proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and

(C) The proceeds are not acquired with cash proceeds;

(2) The proceeds are identifiable cash proceeds; or

(3) The security interest in the proceeds is perfected other than under subsection (c) of this section when the security interest attaches to the proceeds or within twenty days thereafter.

(e) **When perfected security interest in proceeds becomes unperfected.** If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under subsection (d)(1) of this section becomes unperfected at the later of:

(1) When the effectiveness of the filed financing statement lapses under section 9-515 or is terminated under section 9-513; or
§46-9-316. Continued perfection of security interest following change in governing law.

(a) General rule: effect on perfection of change in governing law. A security interest perfected pursuant to the law of the jurisdiction designated in section 9-301(1) or 9-305(c) remains perfected until the earliest of:

1. The time perfection would have ceased under the law of that jurisdiction;
2. The expiration of four months after a change of the debtor's location to another jurisdiction; or
3. The expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

(b) Security interest perfected or unperfected under law of new jurisdiction. If a security interest described in subsection (a) of this section becomes perfected under the law of the other jurisdiction before the earliest time or event described in said subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) Possessory security interest in collateral moved to new jurisdiction. A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

1. The collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;
2. Thereafter the collateral is brought into another jurisdiction; and
(3) Upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(d) Goods covered by certificate of title from this state. Except as otherwise provided in subsection (e) of this section, a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this state remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(e) When subsection (d) security interest becomes unperfected against purchasers. A security interest described in subsection (d) of this section becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under section 9-311(b) or 9-313 are not satisfied before the earlier of:

(1) The time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this state; or

(2) The expiration of four months after the goods had become so covered.

(f) Change in jurisdiction of bank, issuer, nominated person, securities intermediary or commodity intermediary. A security interest in deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the bank’s jurisdiction, the issuer’s jurisdiction, a nominated person’s jurisdiction, the securities intermediary’s jurisdiction or the commodity intermediary’s jurisdiction, as applicable, remains perfected until the earlier of:

(1) The time the security interest would have become unperfected under the law of that jurisdiction; or

(2) The expiration of four months after a change of the applicable jurisdiction to another jurisdiction.
Subsection (f) security interest perfected or unperfected under law of new jurisdiction. If a security interest described in subsection (f) of this section becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

SUBPART 3. PRIORITY.

§46-9-317. Interests that take priority over or take free of security interest or agricultural lien.

(a) Conflicting security interests and rights of lien creditors. A security interest or agricultural lien is subordinate to the rights of:

(1) A person entitled to priority under section 9-322; and

(2) Except as otherwise provided in subsection (e) of this section, a person that becomes a lien creditor before the earlier of the time: (A) The security interest or agricultural lien is perfected; or (B) one of the conditions specified in section 9-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) Buyers that receive delivery. Except as otherwise provided in subsection (e) of this section, a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Lessees that receive delivery. Except as otherwise provided in subsection (e) of this section, a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without
knowledge of the security interest or agricultural lien and before it is perfected.

(d) **Licensees and buyers of certain collateral.** A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, general intangibles or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) **Purchase-money security interest.** Except as otherwise provided in sections 9-320 and 9-321, if a person files a financing statement with respect to a purchase-money security interest before or within twenty days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee or lien creditor which arise between the time the security interest attaches and the time of filing.

§46-9-318. **No interest retained in right to payment that is sold; rights and title of seller of account or chattel paper with respect to creditors and purchasers.**

(a) **Seller retains no interest.** A debtor that has sold an account, chattel paper, payment intangible, or promissory note does not retain a legal or equitable interest in the collateral sold.

(b) **Deemed rights of debtor if buyer’s security interest unperfected.** For purposes of determining the rights of creditors of, and purchasers for, value of an account or chattel paper from, a debtor that has sold an account or chattel paper, while the buyer’s security interest is unperfected, the debtor is deemed to have rights and title to the account or chattel paper identical to those the debtor sold.

§46-9-319. **Rights and title of consignee with respect to creditors and purchasers.**

(a) **Consignee has consignor’s rights.** Except as otherwise provided in subsection (b) of this section, for purposes of determining the rights of creditors of, and purchasers for value of goods from, a consignee, while the goods are in the posses-
ersion of the consignee, the consignee is deemed to have rights
and title to the goods identical to those the consignor had or had
power to transfer.

(b) **Applicability of other law.** For purposes of determining
the rights of a creditor of a consignee, law other than this
article determines the rights and title of a consignee while
goods are in the consignee’s possession if, under this part, a
perfected security interest held by the consignor would have
priority over the rights of the creditor.


(a) **Buyer in ordinary course of business.** Except as
otherwise provided in subsection (e) of this section, a buyer in
ordinary course of business, other than a person buying farm
products from a person engaged in farming operations, takes
free of a security interest created by the buyer’s seller, even if
the security interest is perfected and the buyer knows of its
existence.

(b) **Buyer of consumer goods.** Except as otherwise
provided in subsection (e) of this section, a buyer of goods from
a person who used or bought the goods for use primarily for
personal, family or household purposes takes free of a security
interest, even if perfected, if the buyer buys:

(1) Without knowledge of the security interest;

(2) For value;

(3) Primarily for the buyer’s personal, family or household
purposes; and

(4) Before the filing of a financing statement covering the
goods.

(c) **Effectiveness of filing for subsection (b).** To the extent
that it affects the priority of a security interest over a buyer of
goods under subsection (b) of this section, the period of
effectiveness of a filing made in the jurisdiction in which the
seller is located is governed by section 9-316(a) and (b).
(d) **Buyer in ordinary course of business at wellhead or minehead.** A buyer in ordinary course of business buying oil, gas or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.

(e) **Possessory security interest not affected.** Subsections (a) and (b) do not affect a security interest in goods in the possession of the secured party under section 9-313.

§46-9-321. **Licensee of general intangible and lessee of goods in ordinary course of business.**

(a) “Licensee in ordinary course of business.” In this section, “licensee in ordinary course of business” means a person that becomes a licensee of a general intangible in good faith, without knowledge that the license violates the rights of another person in the general intangible, and in the ordinary course from a person in the business of licensing general intangibles of that kind. A person becomes a licensee in the ordinary course if the license to the person comports with the usual or customary practices in the kind of business in which the licensor is engaged or with the licensor’s own usual or customary practices.

(b) **Rights of licensee in ordinary course of business.** A licensee in ordinary course of business takes its rights under a nonexclusive license free of a security interest in the general intangible created by the licensor, even if the security interest is perfected and the licensee knows of its existence.

(c) **Rights of lessee in ordinary course of business.** A lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods created by the lessor, even if the security interest is perfected and the lessee knows of its existence.

§46-9-322. **Priorities among conflicting security interests in and agricultural liens on same collateral.**

(a) **General priority rules.** Except as otherwise provided in this section, priority among conflicting security interests and
agricultural liens in the same collateral is determined according to the following rules:

(1) Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.

(2) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.

(3) The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.

(b) Time of perfection: proceeds and supporting obligations. For the purposes of subsection (a)(1) of this section:

(1) The time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds; and

(2) The time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation.

(c) Special priority rules: proceeds and supporting obligations. Except as otherwise provided in subsection (f) of this section, a security interest in collateral which qualifies for priority over a conflicting security interest under section 9-327, 9-328, 9-329, 9-330 or 9-331 also has priority over a conflicting security interest in:

(1) Any supporting obligation for the collateral; and

(2) Proceeds of the collateral if:

(A) The security interest in proceeds is perfected;
(B) The proceeds are cash proceeds or of the same type as the collateral; and

(C) In the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral or an account relating to the collateral.

(d) First-to-file priority rule for certain collateral. Subject to subsection (e) of this section and except as otherwise provided in subsection (f) of this section, if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property or letter-of-credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing.

(e) Applicability of subsection (d). Subsection (d) of this section applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property or letter-of-credit rights.

(f) Limitations on subsections (a) through (e). Subsections (a) through (e), inclusive, of this section are subject to:

(1) Subsection (g) of this section and the other provisions of this part;

(2) Section 4-210 with respect to a security interest of a collecting bank;

(3) Section 5-118 with respect to a security interest of an issuer or nominated person; and

(4) Section 9-110 with respect to a security interest arising under article two or two-a.

(g) Priority under agricultural lien statute. A perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same collateral if the statute creating the agricultural lien so provides.

§46-9-323. Future advances.
(a) When priority based on time of advance. Except as otherwise provided in subsection (c) of this section, for purposes of determining the priority of a perfected security interest under section 9-322(a)(1), perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that:

1. Is made while the security interest is perfected only:
   (A) Under section 9-309 when it attaches; or
   (B) Temporarily under section 9-312(e), (f) or (g); and

2. Is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under section 9-309 or 9-312(e), (f) or (g).

(b) Lien creditor. Except as otherwise provided in subsection (c) of this section, a security interest is subordinate to the rights of a person that becomes a lien creditor to the extent that the security interest secures an advance made more than forty-five days after the person becomes a lien creditor unless the advance is made:

1. Without knowledge of the lien; or
2. Pursuant to a commitment entered into without knowledge of the lien.

(c) Buyer of receivables. Subsections (a) and (b) of this section do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles or promissory notes or a consignor.

(d) Buyer of goods. Except as otherwise provided in subsection (e) of this section, a buyer of goods other than a buyer in ordinary course of business takes free of a security interest to the extent that it secures advances made after the earlier of:

1. The time the secured party acquires knowledge of the buyer’s purchase; or
2. Forty-five days after the purchase.
(e) **Advances made pursuant to commitment: priority of buyer of goods.** Subsection (d) of this section does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer’s purchase and before the expiration of the forty-five-day period.

(f) **Lessee of goods.** Except as otherwise provided in subsection (g) of this section, a lessee of goods, other than a lessee in ordinary course of business, takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:

1. The time the secured party acquires knowledge of the lease; or
2. Forty-five days after the lease contract becomes enforceable.

(g) **Advances made pursuant to commitment: priority of lessee of goods.** Subsection (f) of this section does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the forty-five-day period.

§46-9-324. **Priority of purchase-money security interests.**

(a) **General rule: purchase-money priority.** Except as otherwise provided in subsection (g) of this section, a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and, except as otherwise provided in section 9-327, a perfected security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within twenty days thereafter.

(b) **Inventory purchase-money priority.** Subject to subsection (c) and except as otherwise provided in subsection (g) of this section, a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds
of the inventory and in proceeds of the chattel paper, if so
provided in section 9-330, and, except as otherwise provided in
section 9-327, also has priority in identifiable cash proceeds of
the inventory to the extent the identifiable cash proceeds are
received on or before the delivery of the inventory to a buyer,
if:

(1) The purchase-money security interest is perfected when
the debtor receives possession of the inventory;

(2) The purchase-money secured party sends an authenti-
cated notification to the holder of the conflicting security
interest;

(3) The holder of the conflicting security interest receives
the notification within five years before the debtor receives
possession of the inventory; and

(4) The notification states that the person sending the
notification has or expects to acquire a purchase-money security
interest in inventory of the debtor and describes the inventory.

(c) **Holders of conflicting inventory security interests to
be notified.** Subsection (b)(2) through (4), inclusive, of this
section apply only if the holder of the conflicting security
interest had filed a financing statement covering the same types
of inventory:

(1) If the purchase-money security interest is perfected by
filing, before the date of the filing; or

(2) If the purchase-money security interest is temporarily
perfected without filing or possession under section 9-312(f),
before the beginning of the twenty-day period thereunder.

(d) **Livestock purchase-money priority.** Subject to
subsection (e) of this section and except as otherwise provided
in subsection (g) of this section, a perfected purchase-money
security interest in livestock that are farm products has priority
over a conflicting security interest in the same livestock, and,
except as otherwise provided in section 9-327, a perfected
security interest in their identifiable proceeds and identifiable
products in their unmanufactured states also has priority, if:
(1) The purchase-money security interest is perfected when the debtor receives possession of the livestock;

(2) The purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(3) The holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock; and

(4) The notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

e) Holders of conflicting livestock security interests to be notified. Subsection (d)(2) through (4), inclusive, of this section apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock:

(1) If the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) If the purchase-money security interest is temporarily perfected without filing or possession under section 9-312(f), before the beginning of the twenty-day period thereunder.

f) Software purchase-money priority. Except as otherwise provided in subsection (g) of this section, a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, and, except as otherwise provided in section 9-327, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.

(g) Conflicting purchase-money security interests. If more than one security interest qualifies for priority in the same collateral under subsection (a), (b), (d) or (f) of this section:
(1) A security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and

(2) In all other cases, section 9-322(a) applies to the qualifying security interests.


(a) Except as otherwise provided in subsections (c), (d), and (e) of this section, if the requirements of subsection (b) of this section are satisfied, a perfected production-money security interest in production-money crops has priority over a conflicting security interest in the same crops and, except as otherwise provided in section 9-327, also has priority in their identifiable proceeds.

(b) A production-money security interest has priority under subsection (a) of this section if:

(1) The production-money security interest is perfected by filing when the production-money secured party first gives new value to enable the debtor to produce the crops;

(2) The production-money secured party sends an authenticated notification to the holder of the conflicting security interest not less than ten or more than thirty days before the production-money secured party first gives new value to enable the debtor to produce the crops if the holder had filed a financing statement covering the crops before the date of the filing made by the production-money secured party; and

(3) The notification states that the production-money secured party has or expects to acquire a production-money security interest in the debtor’s crops and provides a description of the crops.

(c) Except as otherwise provided in subsection (d) or (e) of this section, if more than one security interest qualifies for priority in the same collateral under subsection (a) of this
section, the security interests rank according to priority in time of filing under section 9-322(a).

(d) To the extent that a person holding a perfected security interest in production-money crops that are the subject of a production-money security interest gives new value to enable the debtor to produce the production-money crops and the value is in fact used for the production of the production-money crops, the security interests rank according to priority in time of filing under section 9-322(a).

(e) To the extent that a person holds both an agricultural lien and a production-money security interest in the same collateral securing the same obligations, the rules of priority applicable to agricultural liens govern priority.

§46-9-325. Priority of security interests in transferred collateral.

(a) Subordination of security interest in transferred collateral. Except as otherwise provided in subsection (b) of this section, a security interest created by a debtor is subordinate to a security interest in the same collateral created by another person if:

(1) The debtor acquired the collateral subject to the security interest created by the other person;

(2) The security interest created by the other person was perfected when the debtor acquired the collateral; and

(3) There is no period thereafter when the security interest is unperfected.

(b) Limitation of subsection (a) subordination. Subsection (a) of this section subordinates a security interest only if the security interest:

(1) Otherwise would have priority solely under section 9-322(a) or 9-324; or

(2) Arose solely under section 2-711(3) or 2A-508(5).

§46-9-326. Priority of security interests created by new debtor.
(a) **Subordination of security interest created by new debtor.** Subject to subsection (b) of this section, a security interest created by a new debtor which is perfected by a filed financing statement that is effective solely under section 9-508 in collateral in which a new debtor has or acquires rights is subordinate to a security interest in the same collateral which is perfected other than by a filed financing statement that is effective solely under section 9-508.

(b) **Priority under other provisions; multiple original debtors.** The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements that are effective solely under section 9-508. However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

§46-9-327. **Priority of security interests in deposit account.**

The following rules govern priority among conflicting security interests in the same deposit account:

1. A security interest held by a secured party having control of the deposit account under section 9-104 has priority over a conflicting security interest held by a secured party that does not have control.

2. Except as otherwise provided in paragraphs (3) and (4) of this section, security interests perfected by control under section 9-314 rank according to priority in time of obtaining control.

3. Except as otherwise provided in paragraph (4) of this section, a security interest held by the bank with which the deposit account is maintained has priority over a conflicting security interest held by another secured party.

4. A security interest perfected by control under section 9-104(a)(3) has priority over a security interest held by the bank with which the deposit account is maintained.
§46-9-328. Priority of security interests in investment property.

The following rules govern priority among conflicting security interests in the same investment property:

(1) A security interest held by a secured party having control of investment property under section 9-106 has priority over a security interest held by a secured party that does not have control of the investment property.

(2) Except as otherwise provided in paragraphs (3) and (4) of this section, conflicting security interests held by secured parties each of which has control under section 9-106 rank according to priority in time of:

(A) If the collateral is a security, obtaining control;

(B) If the collateral is a security entitlement carried in a securities account and:

(i) If the secured party obtained control under section 8-106(d)(1), the secured party’s becoming the person for which the securities account is maintained;

(ii) If the secured party obtained control under section 8-106(d)(2), the securities intermediary’s agreement to comply with the secured party’s entitlement orders with respect to security entitlements carried or to be carried in the securities account; or

(iii) If the secured party obtained control through another person under section 8-106(d)(3), the time on which priority would be based under this paragraph if the other person were the secured party; or

(C) If the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in section 9-106(b)(2) with respect to commodity contracts carried or to be carried with the commodity intermediary.

(3) A security interest held by a securities intermediary in a security entitlement or a securities account maintained with
the securities intermediary has priority over a conflicting 
security interest held by another secured party.

(4) A security interest held by a commodity intermediary in 
a commodity contract or a commodity account maintained with 
the commodity intermediary has priority over a conflicting 
security interest held by another secured party.

(5) A security interest in a certificated security in registered 
form which is perfected by taking delivery under section 
9-313(a) and not by control under section 9-314 has priority 
over a conflicting security interest perfected by a method other 
than control.

(6) Conflicting security interests created by a broker, 
securities intermediary or commodity intermediary which are 
perfected without control under section 9-106 rank equally.

(7) In all other cases, priority among conflicting security 
interests in investment property is governed by sections 9-322 
and 9-323.


The following rules govern priority among conflicting 
security interests in the same letter-of-credit right:

(1) A security interest held by a secured party having 
control of the letter-of-credit right under section 9-107 has 
priority to the extent of its control over a conflicting security 
interest held by a secured party that does not have control.

(2) Security interests perfected by control under section 
9-314 rank according to priority in time of obtaining control.

§46-9-330. Priority of purchaser of chattel paper or instrument.

(a) Purchaser’s priority: security interest claimed 
merely as proceeds. A purchaser of chattel paper has priority 
over a security interest in the chattel paper which is claimed 
merely as proceeds of inventory subject to a security interest if:

(1) In good faith and in the ordinary course of the pur-
chaser’s business, the purchaser gives new value and takes
possession of the chattel paper or obtains control of the chattel paper under section 9-105; and

(2) The chattel paper does not indicate that it has been assigned to an identified assignee other than the purchaser.

(b) **Purchaser’s priority: other security interests.** A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under section 9-105 in good faith, in the ordinary course of the purchaser’s business, and without knowledge that the purchase violates the rights of the secured party.

(c) **Chattel paper purchaser’s priority in proceeds.** Except as otherwise provided in section 9-327, a purchaser having priority in chattel paper under subsection (a) or (b) of this section also has priority in proceeds of the chattel paper to the extent that:

1. Section 9-322 provides for priority in the proceeds; or
2. The proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser’s security interest in the proceeds is unperfected.

(d) **Instrument purchaser’s priority.** Except as otherwise provided in section 9-331(a), a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.

(e) **Holder of purchase-money security interest gives new value.** For purposes of subsections (a) and (b) of this section, the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.
(f) **Indication of assignment gives knowledge.** For purposes of subsections (b) and (d) of this section, if chattel paper or an instrument indicates that it has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

§46-9-331. **Priority of rights of purchasers of instruments, documents, and securities under other articles; priority of interests in financial assets and security entitlements under article eight.**

(a) **Rights under articles three, seven and eight not limited.** This article does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in articles three, seven and eight.

(b) **Protection under article eight.** This article does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of an adverse claim under article eight.

(c) **Filing not notice.** Filing under this article does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in subsections (a) and (b) of this section.

§46-9-332. **Transfer of money; transfer of funds from deposit account.**

(a) **Transferee of money.** A transferee of money takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

(b) **Transferee of funds from deposit account.** A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts
§46-9-333. Priority of certain liens arising by operation of law.

(a) "Possessory lien." In this section, "possessory lien" means an interest, other than a security interest or an agricultural lien:

1. Which secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person's business;

2. Which is created by statute or rule of law in favor of the person; and

3. Whose effectiveness depends on the person's possession of the goods.

(b) Priority of possessory lien. A possessory lien on goods has priority over a security interest in the goods unless the lien is created by a statute that expressly provides otherwise.


(a) Security interest in fixtures under this article. A security interest under this article may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this article in ordinary building materials incorporated into an improvement on land.

(b) Security interest in fixtures under real-property law. This article does not prevent creation of an encumbrance upon fixtures under real property law.

(c) General rule: subordination of security interest in fixtures. In cases not governed by subsections (d) through (h), inclusive, of this section, a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

(d) Fixtures purchase-money priority. Except as otherwise provided in subsection (h) of this section, a perfected security interest in fixtures has priority over a conflicting
interest of an encumbrancer or owner of the real property if the
debtor has an interest of record in or is in possession of the real
property and:

(1) The security interest is a purchase-money security
interest;

(2) The interest of the encumbrancer or owner arises before
the goods become fixtures; and

(3) The security interest is perfected by a fixture filing
before the goods become fixtures or within twenty days
thereafter.

(c) **Priority of security interest in fixtures over interests**
**in real property.** A perfected security interest in fixtures has
priority over a conflicting interest of an encumbrancer or owner
of the real property if:

(1) The debtor has an interest of record in the real property
or is in possession of the real property and the security interest:

(A) Is perfected by a fixture filing before the interest of the
encumbrancer or owner is of record; and

(B) Has priority over any conflicting interest of a predeces-

sor in title of the encumbrancer or owner;

(2) Before the goods become fixtures, the security interest
is perfected by any method permitted by this article and the
fixtures are readily removable:

(A) Factory or office machines;

(B) Equipment that is not primarily used or leased for use
in the operation of the real property; or

(C) Replacements of domestic appliances that are consumer
goods;

(3) The conflicting interest is a lien on the real property
obtained by legal or equitable proceedings after the security
interest was perfected by any method permitted by this article;
or
(4) The security interest is:

(A) Created in a manufactured home in a manufactured-home transaction; and

(B) Perfected pursuant to a statute described in section 9-311(a)(2).

(f) **Priority based on consent, disclaimer or right to remove.** A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) The encumbrancer or owner has, in an authenticated record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

(2) The debtor has a right to remove the goods as against the encumbrancer or owner.

(g) **Continuation of subsection (f) priority.** The priority of the security interest under subsection (f)(2) of this section continues for a reasonable time if the debtor’s right to remove the goods as against the encumbrancer or owner terminates.

(h) **Priority of construction mortgage.** A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in subsections (e) and (f) of this section, a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

(i) **Priority of security interest in crops.** A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.
(j) Subsection (i) prevails. Subsection (i) of this section prevails over any inconsistent provision of an existing or future statute, rule or regulation of this state unless the provision is contained in a statute of this state, refers expressly to this section and states that the provision prevails over this section.

§46-9-335. Accessions.

(a) Creation of security interest in accession. A security interest may be created in an accession and continues in collateral that becomes an accession.

(b) Perfection of security interest. If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.

(c) Priority of security interest. Except as otherwise provided in subsection (d) of this section, the other provisions of this part determine the priority of a security interest in an accession.

(d) Compliance with certificate-of-title statute. A security interest in an accession is subordinate to a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title statute under section 9-311(b).

(e) Removal of accession after default. After default, subject to part 6, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.

(f) Reimbursement following removal. A secured party that removes an accession from other goods under subsection (e) of this section shall promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the holder or owner for any diminution in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse
permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.


(a) "Commingled goods." In this section, "commingled goods" means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

(b) No security interest in commingled goods as such. A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.

(c) Attachment of security interest to product or mass. If collateral becomes commingled goods, a security interest attaches to the product or mass.

(d) Perfection of security interest. If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under subsection (c) of this section is perfected.

(e) Priority of security interest. Except as otherwise provided in subsection (f) of this section, the other provisions of this part determine the priority of a security interest that attaches to the product or mass under subsection (c) of this section.

(f) Conflicting security interests in product or mass. If more than one security interest attaches to the product or mass under subsection (c) of this section, the following rules determine priority:

(1) A security interest that is perfected under subsection (d) has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.

(2) If more than one security interest is perfected under subsection (d) of this section, the security interests rank equally in proportion to value of the collateral at the time it became commingled goods.

If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this state issues a certificate of title that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

(1) A buyer of the goods, other than a person in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and

(2) The security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under section 9-311(b), after issuance of the certificate and without the conflicting secured party’s knowledge of the security interest.

§46-9-338. Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.

If a security interest or agricultural lien is perfected by a filed financing statement providing information described in section 9-516(b)(5) which is incorrect at the time the financing statement is filed:

(1) The security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(2) A purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of chattel paper, documents, goods, instruments, or a security certificate, receives delivery of the collateral.

§46-9-339. Priority subject to subordination.
This article does not preclude subordination by agreement by a person entitled to priority.

SUBPART 4. RIGHTS OF BANK.

§46-9-340. Effectiveness of right of recoupment or set-off against deposit account.

(a) Exercise of recoupment or set-off. Except as otherwise provided in subsection (c) of this section, a bank with which a deposit account is maintained may exercise any right of recoupment or set-off against a secured party that holds a security interest in the deposit account.

(b) Recoupment or set-off not affected by security interest. Except as otherwise provided in subsection (c) of this section, the application of this article to a security interest in a deposit account does not affect a right of recoupment or set-off of the secured party as to a deposit account maintained with the secured party.

(c) When set-off ineffective. The exercise by a bank of a set-off against a deposit account is ineffective against a secured party that holds a security interest in the deposit account which is perfected by control under section 9-104(a)(3), if the set-off is based on a claim against the debtor.

§46-9-341. Bank’s rights and duties with respect to deposit account.

Except as otherwise provided in section 9-340(c), and unless the bank otherwise agrees in an authenticated record, a bank’s rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended or modified by:

(1) The creation, attachment or perfection of a security interest in the deposit account;

(2) The bank’s knowledge of the security interest; or

(3) The bank’s receipt of instructions from the secured party.
§46-9-342. Bank's right to refuse to enter into or disclose existence of control agreement.

This article does not require a bank to enter into an agreement of the kind described in section 9-104(a)(2), even if its customer so requests or directs. A bank that has entered into such an agreement is not required to confirm the existence of the agreement to another person unless requested to do so by its customer.

PART 4. RIGHTS OF THIRD PARTIES.


(a) Other law governs alienability; exceptions. Except as otherwise provided in subsection (b) of this section and sections 9-406, 9-407, 9-408 and 9-409, whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by law other than this article.

(b) Agreement does not prevent transfer. An agreement between the debtor and secured party which prohibits a transfer of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking effect.

§46-9-402. Secured party not obligated on contract of debtor or in tort.

The existence of a security interest, agricultural lien, or authority given to a debtor to dispose of or use collateral, without more, does not subject a secured party to liability in contract or tort for the debtor's acts or omissions.

§46-9-403. Agreement not to assert defenses against assignee.

(a) "Value." In this section, "value" has the meaning provided in section 3-303(a).

(b) Agreement not to assert claim or defense. Except as otherwise provided in this section, an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment:
(1) For value;
(2) In good faith;
(3) Without notice of a claim of a property or possessory
right to the property assigned; and
(4) Without notice of a defense or claim in recoupment of
the type that may be asserted against a person entitled to
enforce a negotiable instrument under section 3-305(a).

(c) When subsection (b) not applicable. Subsection (b) of
this section does not apply to defenses of a type that may be
asserted against a holder in due course of a negotiable instru-
ment under section 3-305(b).

(d) Omission of required statement in consumer trans-
action. In a consumer transaction, if a record evidences the
account debtor's obligation, law other than this article requires
that the record include a statement to the effect that the rights
of an assignee are subject to claims or defenses that the account
debtor could assert against the original obligee and the record
does not include such a statement:

(1) The record has the same effect as if the record included
such a statement; and
(2) The account debtor may assert against an assignee those
claims and defenses that would have been available if the
record included such a statement.

(e) Rule for individual under other law. This section is
subject to law other than this article which establishes a
different rule for an account debtor who is an individual and
who incurred the obligation primarily for personal, family, or
household purposes.

(f) Other law not displaced. Except as otherwise provided
in subsection (d) of this section, this section does not displace
law other than this article which gives effect to an agreement by
an account debtor not to assert a claim or defense against an
assignee.
§46-9-404. Rights acquired by assignee; claims and defenses against assignee.

(a) **Assignee’s rights subject to terms, claims and defenses; exceptions.** Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to subsections (b) through (e), inclusive, of this section, the rights of an assignee are subject to:

(1) All terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract; and

(2) Any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment authenticated by the assignor or the assignee.

(b) **Account debtor’s claim reduces amount owed to assignee.** Subject to subsection (c) of this section and except as otherwise provided in subsection (d) of this section, the claim of an account debtor against an assignor may be asserted against an assignee under subsection (a) of this section only to reduce the amount the account debtor owes.

(c) **Rule for individual under other law.** This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family or household purposes.

(d) **Omission of required statement in consumer transaction.** In a consumer transaction, if a record evidences the account debtor’s obligation, law other than this article requires that the record include a statement to the effect that the account debtor’s recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and the record does not include such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record included such a statement.
(e) **Inapplicability to health-care-insurance receivable.**

This section does not apply to an assignment of a health-care-insurance receivable.

§46-9-405. **Modification of assigned contract.**

(a) **Effect of modification on assignee.** A modification of or substitution for an assigned contract is effective against an assignee if made in good faith. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that the modification or substitution is a breach of contract by the assignor. This subsection is subject to subsections (b) through (d), inclusive, of this section.

(b) **Applicability of subsection (a).** Subsection (a) applies to the extent that:

1. The right to payment or a part thereof under an assigned contract has not been fully earned by performance; or
2. The right to payment or a part thereof has been fully earned by performance and the account debtor has not received notification of the assignment under section 9-406(a).

(c) **Rule for individual under other law.** This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family or household purposes.

(d) **Inapplicability to health-care-insurance receivable.**

This section does not apply to an assignment of a health-care-insurance receivable.

§46-9-406. **Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles and promissory notes ineffective.**

(a) **Discharge of account debtor; effect of notification.** Subject to subsections (b) through (i), an account debtor on an account, chattel paper or a payment intangible may discharge
its obligation by paying the assignor until, but not after, the
account debtor receives a notification, authenticated by the
assignor or the assignee, that the amount due or to become due
has been assigned and that payment is to be made to the
assignee. After receipt of the notification, the account debtor
may discharge its obligation by paying the assignee and may
not discharge the obligation by paying the assignor.

(b) **When notification ineffective.** Subject to subsection
(h) of this section, notification is ineffective under subsection
(a) of this section:

(1) If it does not reasonably identify the rights assigned;

(2) To the extent that an agreement between an account
debtor and a seller of a payment intangible limits the account
debtor’s duty to pay a person other than the seller and the
limitation is effective under law other than this article; or

(3) At the option of an account debtor, if the notification
notifies the account debtor to make less than the full amount of
any installment or other periodic payment to the assignee, even
if:

(A) Only a portion of the account, chattel paper or payment
intangible has been assigned to that assignee;

(B) A portion has been assigned to another assignee; or

(C) The account debtor knows that the assignment to that
assignee is limited.

(c) **Proof of assignment.** Subject to subsection (h) of this
section, if requested by the account debtor, an assignee shall
seasonably furnish reasonable proof that the assignment has
been made. Unless the assignee complies, the account debtor
may discharge its obligation by paying the assignor, even if the
account debtor has received a notification under subsection (a)
of this section.

(d) **Term restricting assignment generally ineffective.**
Except as otherwise provided in subsection (e) of this section
and sections 2A-303 and 9-407, and subject to subsection (h) of
this section, a term in an agreement between an account debtor
and an assignor or in a promissory note is ineffective to the
extent that it:

(1) Prohibits, restricts or requires the consent of the account
debtor or person obligated on the promissory note to the
assignment or transfer of, or the creation, attachment, perfection
or enforcement of a security interest in, the account, chattel
paper, payment intangible or promissory note; or

(2) Provides that the assignment or transfer or the creation,
attachment, perfection or enforcement of the security interest
may give rise to a default, breach, right of recoupment, claim,
defense, termination, right of termination or remedy under the
account, chattel paper, payment intangible or promissory note.

(e) Inapplicability of subsection (d) to certain sales.
Subsection (d) of this section does not apply to the sale of a
payment intangible or promissory note.

(f) Legal restrictions on assignment generally ineffect-
tive. Except as otherwise provided in sections 2A-303 and 9-
407 and subject to subsections (h) and (i) of this section, a rule
of law, statute or regulation that prohibits, restricts or requires
the consent of a government, governmental body or official, or
account debtor to the assignment or transfer of, or creation of
a security interest in, an account or chattel paper is ineffective
to the extent that the rule of law, statute or regulation:

(1) Prohibits, restricts or requires the consent of the
government, governmental body or official, or account debtor
to the assignment or transfer of, or the creation, attachment,
perfection or enforcement of a security interest in the account
or chattel paper; or

(2) Provides that the assignment or transfer or the creation,
attachment, perfection or enforcement of the security interest
may give rise to a default, breach, right of recoupment, claim,
defense, termination, right of termination or remedy under the
account or chattel paper.
(g) **Subsection (b)(3) not waivable.** Subject to subsection (h) of this section, an account debtor may not waive or vary its option under subsection (b)(3) of this section.

(h) **Rule for individual under other law.** This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family or household purposes.

(i) **Inapplicability to health-care-insurance receivable.** This section does not apply to an assignment of a health-care-insurance receivable.

(j) **Section prevails over specified inconsistent law.** This section prevails over any inconsistent provision of an existing or future statute, rule or regulation of this state unless the provision is contained in a statute of this state, refers expressly to this section and states that the provision prevails over this section.

§46-9-407. **Restrictions on creation or enforcement of security interest in leasehold interest or in lessor's residual interest.**

(a) **Term restricting assignment generally ineffective.** Except as otherwise provided in subsection (b) of this section, a term in a lease agreement is ineffective to the extent that it:

(1) Prohibits, restricts or requires the consent of a party to the lease to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, an interest of a party under the lease contract or in the lessor’s residual interest in the goods; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination or remedy under the lease.
(b) **Effectiveness of certain terms.** Except as otherwise provided in section 2A-303(7), a term described in subsection (a)(2) is effective to the extent that there is:

1. A transfer by the lessee of the lessee’s right of possession or use of the goods in violation of the term; or

2. A delegation of a material performance of either party to the lease contract in violation of the term.

(c) **Security interest not material impairment.** The creation, attachment, perfection or enforcement of a security interest in the lessor’s interest under the lease contract or the lessor’s residual interest in the goods is not a transfer that materially impairs the lessee’s prospect of obtaining return performance or materially changes the duty of or materially increases the burden or risk imposed on the lessee within the purview of section 2A-303(4) unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the lessor.

§46-9-408. Restrictions on assignment of promissory notes, health-care-insurance receivables and certain general intangibles ineffective.

(a) **Term restricting assignment generally ineffective.** Except as otherwise provided in subsection (b) of this section, a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license or franchise, and which term prohibits, restricts or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

1. Would impair the creation, attachment or perfection of a security interest; or
(2) Provides that the assignment or transfer or the creation, attachment or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable or general intangible.

(b) **Applicability of subsection (a) to sales of certain rights to payment.** Subsection (a) of this section applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.

(c) **Legal restrictions on assignment generally ineffective.** A rule of law, statute or regulation that prohibits, restricts or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable or general intangible, including a contract, permit, license or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute or regulation:

(1) Would impair the creation, attachment or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination or remedy under the promissory note, health-care-insurance receivable or general intangible.

(d) **Limitation on ineffectiveness under subsections (a) and (c).** To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute or regulation described in subsection (c) of this section would be effective under law other than this article but is ineffective under subsection (a) or (c) of this section, the creation, attachment or perfection of a security interest...
interest in the promissory note, health-care-insurance receivable or general intangible:

(1) Is not enforceable against the person obligated on the promissory note or the account debtor;

(2) Does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(3) Does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(4) Does not entitle the secured party to use or assign the debtor’s rights under the promissory note, health-care-insurance receivable or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable or general intangible;

(5) Does not entitle the secured party to use, assign, possess or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) Does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable or general intangible.

(e) Section prevails over specified inconsistent law. This section prevails over any inconsistent provisions of an existing or future statute, rule or regulation of this state unless the provision is contained in a statute of this state, refers expressly to this section and states that the provision prevails over this section.


(a) Term or law restricting assignment generally ineffective. A term in a letter of credit or a rule of law, statute, regulation, custom or practice applicable to the letter of credit
which prohibits, restricts or requires the consent of an applicant, issuer or nominated person to a beneficiary’s assignment of or creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, statute, regulation, custom or practice:

1. Would impair the creation, attachment or perfection of a security interest in the letter-of-credit right; or
2. Provides that the assignment or the creation, attachment or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination or remedy under the letter-of-credit right.

(b) Limitation on ineffectiveness under subsection (a).
To the extent that a term in a letter of credit is ineffective under subsection (a) of this section but would be effective under law other than this article or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit, or to the assignment of a right to proceeds of the letter of credit, the creation, attachment, or perfection of a security interest in the letter-of-credit right:

1. Is not enforceable against the applicant, issuer, nominated person or transferee beneficiary;
2. Imposes no duties or obligations on the applicant, issuer, nominated person or transferee beneficiary; and
3. Does not require the applicant, issuer, nominated person or transferee beneficiary to recognize the security interest, pay or render performance to the secured party, or accept payment or other performance from the secured party.

PART 5. FILING.

SUBPART 1. FILING OFFICE; CONTENTS AND EFFECTIVENESS OF FINANCING STATEMENT.

(a) **Filing offices.** Except as otherwise provided in subsection (b) of this section, if the local law of this state governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:

(1) The office designated for the filing or recording of a record of a mortgage on the related real property, if:

(A) The collateral is as-extracted collateral or timber to be cut; or

(B) The financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or

(2) The office of the secretary of state, in all other cases, including a case in which the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

(b) **Filing office for transmitting utilities.** The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of secretary of state. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement which is or is to become fixtures.

§46-9-502. **Contents of financing statement; record of mortgage as financing statement; time of filing financing statement.**

(a) **Sufficiency of financing statement.** Subject to subsection (b), a financing statement is sufficient only if it:

(1) Provides the name of the debtor;

(2) Provides the name of the secured party or a representative of the secured party; and

(3) Indicates the collateral covered by the financing statement.

(b) **Real-property-related financing statements.** Except as otherwise provided in section 9-501(b), to be sufficient, a
financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection (a) of this section and also:

(1) Indicate that it covers this type of collateral;

(2) Indicate that it is to be filed for record in the real property records;

(3) Provide a description of the real property to which the collateral is related sufficient to give constructive notice of a mortgage under the law of this state if the description were contained in a record of the mortgage of the real property; and

(4) If the debtor does not have an interest of record in the real property, provide the name of a record owner.

(c) Record of mortgage as financing statement. A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

(1) The record indicates the goods or accounts that it covers;

(2) The goods are or are to become fixtures relate to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;

(3) The record satisfies the requirements for a financing statement in this section other than an indication that it is to be filed in the real property records; and

(4) The record is duly recorded.

(d) Filing before security agreement or attachment. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

§46-9-503. Name of debtor and secured party.
(a) **Sufficiency of debtor’s name.** A financing statement sufficiently provides the name of the debtor:

1. If the debtor is a registered organization, only if the financing statement provides the name of the debtor indicated on the public record of the debtor’s jurisdiction of organization which shows the debtor to have been organized;
2. If the debtor is a decedent’s estate, only if the financing statement provides the name of the decedent and indicates that the debtor is an estate;
3. If the debtor is a trust or a trustee acting with respect to property held in trust, only if the financing statement:
   - Provides the name specified for the trust in its organic documents or, if no name is specified, provides the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors; and
   - Indicates, in the debtor’s name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust; and
4. In other cases:
   - If the debtor has a name, only if it provides the individual or organizational name of the debtor; and
   - If the debtor does not have a name, only if it provides the names of the partners, members, associates or other persons comprising the debtor.

(b) **Additional debtor-related information.** A financing statement that provides the name of the debtor in accordance with subsection (a) of this section is not rendered ineffective by the absence of:

1. A trade name or other name of the debtor; or
2. Unless required under subsection (a)(4)(B) of this section, names of partners, members, associates or other persons comprising the debtor.
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34 (c) **Debtor's trade name insufficient.** A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

35 (d) **Representative capacity.** Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

36 (e) **Multiple debtors and secured parties.** A financing statement may provide the name of more than one debtor and the name of more than one secured party.

§46-9-504. Indication of collateral.

1 A financing statement sufficiently indicates the collateral that it covers if the financing statement provides:

2 (1) A description of the collateral pursuant to section 9-108; or

3 (2) An indication that the financing statement covers all assets or all personal property.

§46-9-505. Filing and compliance with other statutes and treaties for consignments, leases, other bailments and other transactions.

1 (a) **Use of terms other than “debtor” and “secured party.”** A consignor, lessor, or other bailor of goods, a licensor or a buyer of a payment intangible or promissory note may file a financing statement, or may comply with a statute or treaty described in section 9-311(a), using the terms “consignor”, “consignee”, “lessor”, “lessee”, “bailor”, “bailee”, “licensor”, “licensee”, “owner”, “registered owner”, “buyer”, “seller” or words of similar import, instead of the terms “secured party” and “debtor”.

2 (b) **Effect of financing statement under subsection (a).** This part applies to the filing of a financing statement under subsection (a) of this section and, as appropriate, to compliance that is equivalent to filing a financing statement under section 9-311(b), but the filing or compliance is not of itself a factor in
determining whether the collateral secures an obligation. If it is
determined for another reason that the collateral secures an
obligation, a security interest held by the consignor, lessor,
bailor, licensor, owner or buyer which attaches to the collateral
is perfected by the filing or compliance.

§46-9-506. Effect of errors or omissions.

(a) Minor errors and omissions. A financing statement
substantially satisfying the requirements of this part is effective,
even if it has minor errors or omissions, unless the errors or
omissions make the financing statement seriously misleading.

(b) Financing statement seriously misleading. Except as
otherwise provided in subsection (c) of this section, a financing
statement that fails sufficiently to provide the name of the
debtor in accordance with section 9-503(a) is seriously misleading.

(c) Financing statement not seriously misleading. If a
search of the records of the filing office under the debtor’s
correct name, using the filing office’s standard search logic, if
any, would disclose a financing statement that fails sufficiently
to provide the name of the debtor in accordance with section
9-503(a), the name provided does not make the financing
statement seriously misleading.

(d) “Debtor’s correct name.” For purposes of section
9-508(b), the “debtor’s correct name” in subsection (c) of this
section means the correct name of the new debtor.

§46-9-507. Effect of certain events on effectiveness of financing
statement.

(a) Disposition. A filed financing statement remains
effective with respect to collateral that is sold, exchanged,
leased, licensed or otherwise disposed of and in which a
security interest or agricultural lien continues, even if the
secured party knows of or consents to the disposition.

(b) Information becoming seriously misleading. Except
as otherwise provided in subsection (c) of this section and
section 9-508, a financing statement is not rendered ineffective
if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under section 9-506.

(c) **Change in debtor’s name.** If a debtor so changes its name that a filed financing statement becomes seriously misleading under section 9-506:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the change; and

(2) The financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after the change.

§46-9-508. **Effectiveness of financing statement if new debtor becomes bound by security agreement.**

(a) **Financing statement naming original debtor.** Except as otherwise provided in this section, a filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new debtor has or acquires rights to the extent that the financing statement would have been effective had the original debtor acquired rights in the collateral.

(b) **Financing statement becoming seriously misleading.** If the difference between the name of the original debtor and that of the new debtor causes a filed financing statement that is effective under subsection (a) of this section to be seriously misleading under section 9-506:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under section 9-203(d); and

(2) The financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more
than four months after the new debtor becomes bound under section 9-203(d) unless an initial financing statement providing the name of the new debtor is filed before the expiration of that time.

(c) When section not applicable. This section does not apply to collateral as to which a filed financing statement remains effective against the new debtor under section 9-507(a).

§46-9-509. Persons entitled to file a record.

(a) Person entitled to file record. A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:

(1) The debtor authorizes the filing in an authenticated record or pursuant to subsection (b) or (c) of this section; or

(2) The person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(b) Security agreement as authorization. By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

(1) The collateral described in the security agreement; and

(2) Property that becomes collateral under section 9-315(a)(2), whether or not the security agreement expressly covers proceeds.

(c) Acquisition of collateral as authorization. By acquiring collateral in which a security interest or agricultural lien continues under section 9-315(a)(1), a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under section 9-315(a)(2).

(d) Person entitled to file certain amendments. A person may file an amendment other than an amendment that adds
collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:

(1) The secured party of record authorizes the filing; or

(2) The amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by section 9-513(a) or (c), the debtor authorizes the filing and the termination statement indicates that the debtor authorized it to be filed.

(e) Multiple secured parties of record. If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection (d) of this section.

§46-9-510. Effectiveness of filed record.

(a) Filed record effective if authorized. A filed record is effective only to the extent that it was filed by a person that may file it under section 9-509.

(b) Authorization by one secured party of record. A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.

(c) Continuation statement not timely filed. A continuation statement that is not filed within the six-month period prescribed by section 9-515(d) is ineffective.

§46-9-511. Secured party of record.

(a) Secured party of record. A secured party of record with respect to a financing statement is a person whose name is provided as the name of the secured party or a representative of the secured party in an initial financing statement that has been filed. If an initial financing statement is filed under section 9-514(a), the assignee named in the initial financing statement is the secured party of record with respect to the financing statement.
9 (b) Amendment naming secured party of record. If an
amendment of a financing statement which provides the name
of a person as a secured party or a representative of a secured
party is filed, the person named in the amendment is a secured
party of record. If an amendment is filed under section
9-514(b), the assignee named in the amendment is a secured
party of record.

16 (c) Amendment deleting secured party of record. A
person remains a secured party of record until the filing of an
amendment of the financing statement which deletes the person.

§46-9-512. Amendment of financing statement.
1 (a) Amendment of information in financing statement.
Subject to section 9-509, a person may add or delete collateral
covered by, continue or terminate the effectiveness of, or,
subject to subsection (e) of this section, otherwise amend the
information provided in, a financing statement by filing an
amendment that:

(1) Identifies, by its file number, the initial financing
statement to which the amendment relates; and

(2) If the amendment relates to an initial financing state-
ment filed or recorded in a filing office described in section 9-
501(a)(1), provides the date and time that the initial financing
statement was filed or recorded and the information specified
in section 9-502(b).

(b) Period of effectiveness not affected. Except as
otherwise provided in section 9-515, the filing of an amendment
does not extend the period of effectiveness of the financing
statement.

(c) Effectiveness of amendment adding collateral. A
financing statement that is amended by an amendment that adds
collateral is effective as to the added collateral only from the
date of the filing of the amendment.

(d) Effectiveness of amendment adding debtor. A
financing statement that is amended by an amendment that adds
24 a debtor is effective as to the added debtor only from the date
25 of the filing of the amendment.

26 (e) Certain amendments ineffective. An amendment is
27 ineffective to the extent it:

28 (1) Purports to delete all debtors and fails to provide the
29 name of a debtor to be covered by the financing statement; or

30 (2) Purports to delete all secured parties of record and fails
31 to provide the name of a new secured party of record.

§46-9-513. Termination statement.

1 (a) Consumer goods. A secured party shall cause the
2 secured party of record for a financing statement to file a
3 termination statement for the financing statement if the financ-
4 ing statement covers consumer goods and:

5 (1) There is no obligation secured by the collateral covered
6 by the financing statement and no commitment to make an
7 advance, incur an obligation or otherwise give value; or

8 (2) The debtor did not authorize the filing of the initial
9 financing statement.

10 (b) Time for compliance with subsection (a). To comply
11 with subsection (a) of this section, a secured party shall cause
12 the secured party of record to file the termination statement:

13 (1) Within one month after there is no obligation secured by
14 the collateral covered by the financing statement and no
15 commitment to make an advance, incur an obligation or
16 otherwise give value; or

17 (2) If earlier, within twenty days after the secured party
18 receives an authenticated demand from a debtor.

19 (c) Other collateral. In cases not governed by subsection
20 (a), within twenty days after a secured party receives an
21 authenticated demand from a debtor, the secured party shall
22 cause the secured party of record for a financing statement to
23 send to the debtor a termination statement for the financing
24 statement or file the termination statement in the filing office if:
(1) Except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value;

(2) The financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation;

(3) The financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor’s possession; or

(4) The debtor did not authorize the filing of the initial financing statement.

(d) Effect of filing termination statement. Except as otherwise provided in section 9-510, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective. Except as otherwise provided in section 9-510, for purposes of section 9-519 (g), 9-522 (a), and 9-523 (c), the filing with the filing office of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse.

§46-9-514. Assignment of powers of secured party of record.

(a) Assignment reflected on initial financing statement. Except as otherwise provided in subsection (c) of this section, an initial financing statement may reflect an assignment of all of the secured party’s power to authorize an amendment to the financing statement by providing the name and mailing address of the assignee as the name and address of the secured party.

(b) Assignment of filed financing statement. Except as otherwise provided in subsection (c) of this section, a secured party of record may assign of record all or part of its power to authorize an amendment to a financing statement by filing in
the filing office an amendment of the financing statement which:

(1) Identifies, by its file number, the initial financing statement to which it relates;

(2) Provides the name of the assignor; and

(3) Provides the name and mailing address of the assignee.

(c) Assignment of record of mortgage. An assignment of record of a security interest in a fixture covered by a record of a mortgage which is effective as a financing statement filed as a fixture filing under section 9-502(c) may be made only by an assignment of record of the mortgage in the manner provided by law of this state other than the Uniform Commercial Code.

§46-9-515. Duration and effectiveness of financing statement; effect of lapsed financing statement.

(a) Five-year effectiveness. Except as otherwise provided in subsections (b), (e), (f) and (g) of this section, a filed financing statement is effective for a period of five years after the date of filing.

(b) Public-finance or manufactured-home transaction. Except as otherwise provided in subsections (e), (f) and (g) of this section, an initial financing statement filed in connection with a public-finance transaction or manufactured-home transaction is effective for a period of forty years after the date of filing if it indicates that it is filed in connection with a public-finance transaction or manufactured-home transaction.

(c) Lapse and continuation of financing statement. The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (d) of this section. Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it
is deemed never to have been perfected as against a purchaser
of the collateral for value.

(d) When continuation statement may be filed. A
continuation statement may be filed only within six months
before the expiration of the five-year period specified in
subsection (a) of this section or the thirty-year period specified
in subsection (b) of this section, whichever is applicable.

(e) Effect of filing continuation statement. Except as
otherwise provided in section 9-510, upon timely filing of a
continuation statement, the effectiveness of the initial financing
statement continues for a period of five years commencing on
the day on which the financing statement would have become
ineffective in the absence of the filing. Upon the expiration of
the five-year period, the financing statement lapses in the same
manner as provided in subsection (c) of this section, unless,
before the lapse, another continuation statement is filed
pursuant to subsection (d) of this section. Succeeding continua-
tion statements may be filed in the same manner to continue the
effectiveness of the initial financing statement.

(f) Transmitting utility financing statement. If a debtor
is a transmitting utility and a filed financing statement so
indicates, the financing statement is effective until a termina-
tion statement is filed.

(g) Record of mortgage as financing statement. A record
of a mortgage that is effective as a financing statement filed as
a fixture filing under section 9-502(c) remains effective as a
financing statement filed as a fixture filing until the mortgage
is released or satisfied of record or its effectiveness otherwise
terminates as to the real property.

§46-9-516. What constitutes filing; effectiveness of filing.

(a) What constitutes filing. Except as otherwise provided
in subsection (b) of this section, communication of a record to
a filing office and tender of the filing fee or acceptance of the
record by the filing office constitutes filing.
(b) Refusal to accept record; filing does not occur. Filing
does not occur with respect to a record that a filing office
refuses to accept because:

(1) The record is not communicated by a method or
medium of communication authorized by the filing office;

(2) An amount equal to or greater than the applicable filing
fee is not tendered;

(3) The filing office is unable to index the record because:

(A) In the case of an initial financing statement, the record
does not provide a name for the debtor;

(B) In the case of an amendment or correction statement,
the record:

(i) Does not identify the initial financing statement as
required by section 9-512 or 9-518, as applicable; or

(ii) Identifies an initial financing statement whose effective-
ness has lapsed under section 9-515;

(C) In the case of an initial financing statement that
provides the name of a debtor identified as an individual or an
amendment that provides a name of a debtor identified as an
individual which was not previously provided in the financing
statement to which the record relates, the record does not
identify the debtor’s last name; or

(D) In the case of a record filed or recorded in the filing
office described in section 9-501(a)(1), the record does not
provide a sufficient description of the real property to which it
relates;

(4) In the case of an initial financing statement or an
amendment that adds a secured party of record, the record does
not provide a name and mailing address for the secured party of
record;

(5) In the case of an initial financing statement or an
amendment that provides a name of a debtor which was not
previously provided in the financing statement to which the amendment relates, the record does not:

(A) Provide a mailing address for the debtor;

(B) Indicate whether the debtor is an individual or an organization; or

(C) If the financing statement indicates that the debtor is an organization, provide:

(i) A type of organization for the debtor;

(ii) A jurisdiction of organization for the debtor; or

(iii) An organizational identification number for the debtor or indicate that the debtor has none;

(6) In the case of an assignment reflected in an initial financing statement under section 9-514(a) or an amendment filed under section 9-514(b), the record does not provide a name and mailing address for the assignee; or

(7) In the case of a continuation statement, the record is not filed within the six-month period prescribed by section 9-515(d).

(c) Rules applicable to subsection (b). For purposes of subsection (b):

(1) A record does not provide information if the filing office is unable to read or decipher the information; and

(2) A record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by section 9-512, 9-514 or 9-518, is an initial financing statement.

(d) Refusal to accept record; record effective as filed record. A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (b) of this section, is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.
§46-9-517. Effect of indexing errors.

The failure of the filing office to index a record correctly does not affect the effectiveness of the filed record.

§46-9-518. Claim concerning inaccurate or wrongfully filed record.

(a) Correction statement. A person may file in the filing office a correction statement with respect to a record indexed there under the person’s name if the person believes that the record is inaccurate or was wrongfully filed.

(b) Sufficiency of correction statement. A correction statement must:

(1) Identify the record to which it relates by:

(A) The file number assigned to the initial financing statement to which the record relates; and

(B) If the correction statement relates to a record filed or recorded in a filing office described in section 9-501(a)(1), the date and time that the initial financing statement was filed or recorded and the information specified in section 9-502(b);

(2) Indicate that it is a correction statement; and

(3) Provide the basis for the person’s belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person’s belief that the record was wrongfully filed.

(c) Record not affected by correction statement. The filing of a correction statement does not affect the effectiveness of an initial financing statement or other filed record.

SUBPART 2. DUTIES AND OPERATION OF FILING OFFICE.

§46-9-519. Numbering, maintaining and indexing records; communicating information provided in records.
(a) **Filing office duties.** For each record filed in a filing office, the filing office shall:

1. Assign a unique number to the filed record;
2. Create a record that bears the number assigned to the filed record and the date and time of filing;
3. Maintain the filed record for public inspection; and
4. Index the filed record in accordance with subsections (c), (d) and (e) of this section.

(b) **File number.** A file number assigned after the first day of January, two thousand two, must include a digit that:

1. Is mathematically derived from or related to the other digits of the file number; and
2. Aids the filing office in determining whether a number communicated as the file number includes a single-digit or transpositional error.

(c) **Indexing: general.** Except as otherwise provided in subsections (d) and (e) of this section, the filing office shall:

1. Index an initial financing statement according to the name of the debtor and index all filed records relating to the initial financing statement in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement; and
2. Index a record that provides a name of a debtor which was not previously provided in the financing statement to which the record relates also according to the name that was not previously provided.

(d) **Indexing: real-property-related financing statement.** If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, it must be filed for record and the filing office shall index it:

1. Under the names of the debtor and of each owner of record shown on the financing statement as if they were the
mortgagors under a mortgage of the real property described; and

(2) To the extent that the law of this state provides for indexing of records of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee thereunder, or, if indexing is by description, as if the financing statement were a record of a mortgage of the real property described.

(e) Indexing: real-property-related assignment. If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index an assignment filed under section 9-514(a) or an amendment filed under section 9-514(b):

(1) Under the name of the assignor as grantor; and

(2) To the extent that the law of this state provides for indexing a record of the assignment of a mortgage under the name of the assignee.

(f) Retrieval and association capability. The filing office shall maintain a capability:

(1) To retrieve a record by the name of the debtor and:

(A) If the filing office is described in section 9-501(a)(1), by the file number assigned to the initial financing statement to which the record relates and the date and time that the record was filed or recorded; or

(B) If the filing office is described in section 9-501(a)(2), by the file number assigned to the initial financing statement to which the record relates; and

(2) To associate and retrieve with one another an initial financing statement and each filed record relating to the initial financing statement.

(g) Removal of debtor’s name. The filing office may not remove a debtor’s name from the index until one year after the effectiveness of a financing statement naming the debtor lapses under section 9-515 with respect to all secured parties of record.
(h) **Timeliness of filing office performance.** The filing office shall perform the acts required by subsections (a) through (e), inclusive, of this section at the time and in the manner prescribed by filing-office rule, but not later than two business days after the filing office receives the record in question.

§46-9-520. Acceptance and refusal to accept record.

(a) **Mandatory refusal to accept record.** A filing office shall refuse to accept a record for filing for a reason set forth in section 9-516(b) and may refuse to accept a record for filing only for a reason set forth in section 9-516(b).

(b) **Communication concerning refusal.** If a filing office refuses to accept a record for filing, it shall communicate to the person that presented the record the fact of and reason for the refusal and the date and time the record would have been filed had the filing office accepted it. The communication must be made at the time and in the manner prescribed by filing-office rule but, in the case of a filing office described in section 9-501(a)(2), in no event more than two business days after the filing office receives the record.

(c) **When filed financing statement effective.** A filed financing statement satisfying section 9-502(a) and (b) is effective, even if the filing office is required to refuse to accept it for filing under subsection (a) of this section. However, section 9-338 applies to a filed financing statement providing information described in section 9-516(b)(5) which is incorrect at the time the financing statement is filed.

(d) **Separate application to multiple debtors.** If a record communicated to a filing office provides information that relates to more than one debtor, this part applies as to each debtor separately.

§46-9-521. Uniform form of written financing statement and amendment.

(a) **Initial financing statement form.** A filing office that accepts written records may not refuse to accept a written initial financing statement in the following form and format except for a reason set forth in section 9-516(b):
### UCC FINANCING STATEMENT

**FOLLOW INSTRUCTIONS (front and back) CAREFULLY**

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. SEND ACKNOWLEDGEMENT TO: (Name and Address)

---

**1. DEBTOR'S EXACT FULL LEGAL NAME** - Insert only one debtor name (1a or 1b) - do not abbreviate or contain spaces

| 1a. ORGANIZATION'S NAME (or) |
| 1b. INDIVIDUAL'S LAST NAME |
| FIRST NAME |
| MIDDLE NAME |
| SUFFIX |
| MAILING ADDRESS |
| COUNTRY |
| CITY |
| STATE |
| POSTAL CODE |
| TAX ID # |

**2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME** - Insert only one debtor name (2a or 2b) - do not abbreviate or contain spaces

| 2a. ORGANIZATION'S NAME (or) |
| 2b. INDIVIDUAL'S LAST NAME |
| FIRST NAME |
| MIDDLE NAME |
| SUFFIX |
| MAILING ADDRESS |
| COUNTRY |
| CITY |
| STATE |
| POSTAL CODE |
| TAX ID # |

**3. SECURED PARTY'S NAME** (NAME OF TOTAL ASSIGNEE OR ASSIGNOR) - Insert only one secured party name (3a or 3b)

| 3a. ORGANIZATION'S NAME (or) |
| 3b. INDIVIDUAL'S LAST NAME |
| FIRST NAME |
| MIDDLE NAME |
| SUFFIX |
| MAILING ADDRESS |
| COUNTRY |
| CITY |
| STATE |
| POSTAL CODE |
| TAX ID # |

**4. This FINANCING STATEMENT covers the following collateral:**

- [ ] ACCOUNTS RECEIVABLE
- [ ] CHARGES
- [ ] COMMERCIAL TANGIBLE PERSONAL PROPERTY
- [ ] COMMERCIAL REAL PROPERTY
- [ ] INTELLECTUAL PROPERTY
- [ ] INSTRUMENTS
- [ ] INVENTORY
- [ ] INVESTMENT SECURITY
- [ ] MACHINERY AND SUPPLIES
- [ ] MIXTURES
- [ ] PROTOCALS
- [ ] PUBLIC UTILITY EQUIPMENT
- [ ] REAL PROPERTY
- [ ] SECURED PARTY'S RIGHTS TO THE PROPERTY
- [ ] SUPPLEMENT

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**5. ALTERNATIVE DESIGNATION (if applicable)**

- [ ] LESSOR/LESSEE
- [ ] CONSUMER/CONSUMER
- [ ] SELLER/BUYER
- [ ] SELLER
- [ ] LIEN
- [ ] NON-UCF FINANCING STATEMENT

**6. This FINANCING STATEMENT is to be filed for record (or recorded) in the FILER'S STATE, COUNTY & REGISTRATION District.**

**7. Check if REQUESTED SEARCH REPORT from (or Continued) Continued**

**8. At Duty:**

- [ ] Debtor 1
- [ ] Debtor 2

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**NATIONAL UCC FINANCING STATEMENT (FORM UCC1) (REV. 07/29/85)**
UCC FINANCING STATEMENT ADDENDUM
FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT
   OR

9a. ORGANIZATION’S NAME

9b. INDIVIDUAL’S LAST NAME  FIRST NAME  MIDDLE NAME  SUFFIX

10. MISCELLANEOUS:

   THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR’S EXACT FULL LEGAL NAME - Insert only one name (11a or 11b) do not abbreviate or combine names

11a. ORGANIZATION’S NAME

11b. INDIVIDUAL’S LAST NAME  FIRST NAME  MIDDLE NAME  SUFFIX

11c. Mailing Address

11d. Tax ID #: SSN or EIN (if applicable)

11e. Type of Organization

11f. Jurisdiction of Organization

11g. Organizational ID #, if any

   12. ADDITIONAL SECURED PARTY’S or ASSIGNOR’S NAME - Insert only one name (12a or 12b)

12a. ORGANIZATION’S NAME

12b. INDIVIDUAL’S LAST NAME  FIRST NAME  MIDDLE NAME  SUFFIX

12c. Mailing Address

13. This FINANCING STATEMENT covers ☐ Debtor is in a Trust ☐ Trustee acting with respect to property held in trust ☐ Domiciled Estate

14. Description of real estate:

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

16. Additional material description:

17. Check only if applicable and check only one box.

☐ Debtor is a TRANSMITTING UTILITY
☐ Filed in connection with a Manufactured-Home Transaction — effective 30 years
☐Filed in connection with a Public-Finance Transaction — effective 30 years

NATIONAL UCC FINANCING STATEMENT ADDENDUM (FORM UCC1 Ad) (REV. 07/29/98)
(b) Amendment form. A filing office that accepts written records may not refuse to accept a written record in the following form and format except for a reason set forth in section 9-516(b):

**UCC FINANCING STATEMENT AMENDMENT**

FOLLOW INSTRUCTIONS (both print and block) CAREFULLY.

A. NAME & PHONE OF CONTACT AT FILER (optional): __________________________

B. SEND ACKNOWLEDGMENT TO: __________________________

C. CAREFULLY COMPLETE FOLLOWING INSTRUCTIONS:

1. ENTER FINANCING STATEMENT FILE # __________________________

2. TERMINATION: Effective date of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing the Termination Statement.

3. CONTRIBUTION: Effective date of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Contribution Statement is continued for the additional period provided by applicable law.

4. ASSIGNMENT:  
   - Give name of assignor in Item 7a or 7b and address of assignee in Item 7c; and also give name of assignee in Item 6a, or send an acknowledgment to: __________________________

5. AMENDMENT (PARTY INFORMATION): This Amendment affects: [ ] Debtor, [ ] Secured Party of record. Check only one of these two boxes.

6. CURRENT RECORD INFORMATION:

   6a. ORGANIZATION'S NAME OR INDIVIDUAL'S LAST NAME
   __________________________
   __________________________
   __________________________
   __________________________

   7a. ORGANIZATION'S NAME OR INDIVIDUAL'S LAST NAME
   __________________________
   __________________________
   __________________________
   __________________________

   7b. MAILING ADDRESS
   __________________________
   __________________________
   __________________________
   __________________________

   7c. TAX ID # ISN OR EIN
   __________________________
   __________________________

   7d. ORGANIZATION'S NAME OR INDIVIDUAL'S LAST NAME
   __________________________

   7e. TYPE OF ORGANIZATION
   __________________________
   __________________________

   7f. JURISDICTION OF ORGANIZATION
   __________________________
   __________________________

   7g. ORGANIZATIONAL ID
   __________________________
   __________________________

   7h. ORGANIZATION'S NAME OR INDIVIDUAL'S LAST NAME
   __________________________

   8. AMENDMENT (COLLATERAL CHANGE): check only one box:

   [ ] Change by the entry of new collateral or deletion of collateral as described.
   [ ] Change by the entry of new collateral or deletion of collateral as described.

   9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment; if this is an Amendment authorized by a Debtor who has ordered or sold the underlying Debtor, or if this is a Termination authorized by a Debtor, check here and enter name of DEBTOR authorizing this Amendment):

   OR

   9a. ORGANIZATION'S NAME OR INDIVIDUAL'S LAST NAME
   __________________________
   __________________________
   __________________________
   __________________________

   10. OPTIONAL: FILER REFERENCED DATA

   - NATIONAL UCC FINANCING STATEMENT AMENDMENT (FORM UCC3) (REV. 07/29/99)
UCC FINANCING STATEMENT AMENDMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

11. INITIAL FINANCING STATEMENT FILE # (same as Item 14 on Amendment form)

12. NAME OF PARTY AUTHORIZING THIS AMENDMENT (same as Item 9 on Amendment form)

12a. ORGANIZATION'S NAME

12b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME JUNIOR

13. Use this space for additional information

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

(a) Post-lapse maintenance and retrieval of information. The filing office shall maintain a record of the information provided in a filed financing statement for at least one year after the effectiveness of the financing statement has lapsed under section 9-515 with respect to all secured parties of record. The record must be retrievable by using the name of the debtor and:

1 (1) If the record was filed or recorded in the filing office described in section 9-501(a)(1), by using the file number assigned to the initial financing statement to which the record relates and the date and time that the record was filed or recorded; or

1 (2) If the record was filed in the filing office described in section 9-501(a)(2), by using the file number assigned to the initial financing statement to which the record relates.

(b) Destruction of written records. Except to the extent that a statute governing disposition of public records provides otherwise, the filing office immediately may destroy any written record evidencing a financing statement. However, if the filing office destroys a written record, it shall maintain another record of the financing statement which complies with subsection (a) of this section.

§46-9-523. Information from filing office; sale or license of records.

(a) Acknowledgment of filing written record. If a person that files a written record requests an acknowledgment of the filing, the filing office shall send to the person an image of the record showing the number assigned to the record pursuant to section 9-519(a)(1) and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office may instead:

1 (1) Note upon the copy the number assigned to the record pursuant to section 9-519(a)(1) and the date and time of the filing of the record; and

1 (2) Send the copy to the person.
(b) **Acknowledgment of filing other record.** If a person files a record other than a written record, the filing office shall communicate to the person an acknowledgment that provides:

1. The information in the record;
2. The number assigned to the record pursuant to section 9-519(a)(1); and
3. The date and time of the filing of the record.

(c) **Communication of requested information.** The filing office shall communicate or otherwise make available in a record the following information to any person that requests it:

1. Whether there is on file on a date and time specified by the filing office, but not a date earlier than three business days before the filing office receives the request, any financing statement that:
   - Designates a particular debtor;
   - Has not lapsed under section 9-515 with respect to all secured parties of record; and
   - If the request so states, has lapsed under section 9-515 and a record of which is maintained by the filing office under section 9-522(a);
2. The date and time of filing of each financing statement; and
3. The information provided in each financing statement.

(d) **Medium for communicating information.** In complying with its duty under subsection (c) of this section, the filing office may communicate information in any medium. However, if requested, the filing office shall communicate information by issuing its written certificate.

(e) **Timeliness of filing office performance.** The filing office shall perform the acts required by subsections (a) through (d), inclusive, of this section at the time and in the manner prescribed by filing-office rule, but not later than two business days after the filing office receives the request.
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45 (f) Public availability of records. At least weekly, the secretary of state shall offer to sell or license to the public on a nonexclusive basis, in bulk, copies of all records filed in it under this part, in every medium from time to time available to the filing office.

§46-9-524. Delay by filing office.
1 Delay by the filing office beyond a time limit prescribed by this part is excused if:
2 (1) The delay is caused by interruption of communication or computer facilities, war, emergency conditions, failure of equipment or other circumstances beyond control of the filing office; and
3 (2) The filing office exercises reasonable diligence under the circumstances.

§46-9-525. Fees.
1 (a) Initial financing statement or other record: general rule. Except as otherwise provided in subsection (e) of this section, the fee for filing and indexing a record under this part, other than an initial financing statement of the kind described in subsection (b) of this section, is the amount specified in subsection (c) of this section, if applicable, plus:
2 (1) Ten dollars if the record is communicated in writing and consists of one or two pages;
3 (2) Ten dollars if the record is communicated in writing and consists of more than two pages; and
4 (3) Ten dollars if the record is communicated by another medium authorized by filing-office rule.
5 (b) Initial financing statement: public-finance and manufactured housing transactions. Except as otherwise provided in subsection (e) of this section, the fee for filing and indexing an initial financing statement of the kind is the amount specified in subsection (c) of this section, if applicable, plus:
(1) Ten dollars if the financing statement indicates that it is
filed in connection with a public-finance transaction;

(2) Ten dollars if the financing statement indicates that it is
filed in connection with a manufactured-home transaction.

(c) **Number of names.** The number of names required to be
indexed does not affect the amount of the fee in subsections (a)
and (b) of this section.

(d) **Response to information request.** The fee for respond-
ing to a request for information from the filing office, including
for issuing a certificate showing whether there is on file any
financing statement naming a particular debtor, is:

(1) Five dollars if the request is communicated in writing;

(2) Five dollars if the request is communicated by another
medium authorized by filing-office rule; and

(3) Fifty cents per page for each active lien.

(e) **Record of mortgage.** This section does not require a fee
with respect to a record of a mortgage which is effective as a
financing statement filed as a fixture filing or as a financing
statement covering as-extracted collateral or timber to be cut
under section 9-502(c). However, the recording and satisfaction
fees that otherwise would be applicable to the record of the
mortgage apply.

(f) **Deposit of funds.** All fees and moneys collected by the
secretary of state pursuant to the provisions of this article shall
be deposited by the secretary of state in a separate fund in the
state treasury and shall be expended solely for the purposes of
this article, unless otherwise provided by appropriation or other
action of the Legislature.


(a) **Adoption of filing-office rules.** The secretary of state
shall propose rules for legislative approval consistent with this
article and in accordance with the provisions of article three,
chapter twenty-nine-a of this code.
5 (1) Consistent with this article; and
6 (2) Promulgated pursuant to the provisions of chapter twenty-nine-a of this code.
7
8 (b) Harmonization of rules. To keep the filing-office rules and practices of the filing office in harmony with the rules and practices of filing offices in other jurisdictions that enact substantially this part, and to keep the technology used by the filing office compatible with the technology used by filing offices in other jurisdictions that enact substantially this part, the secretary of state, so far as is consistent with the purposes, policies and provisions of this article, in proposing filing-office rules for legislative approval, shall:

9 (1) Consult with filing offices in other jurisdictions that enact substantially this part; and
10 (2) Consult the most recent version of the model rules promulgated by the international association of corporate administrators or any successor organization; and
11 (3) Take into consideration the rules and practices of, and the technology used by, filing offices in other jurisdictions that enact substantially this part.

§46-9-527. Duty to report.

1 The secretary of state shall report to the joint committee on government and finance on or before the first day of July each year on the operation of the filing office. The report must contain a statement of the extent to which:

2 (1) The filing-office rules are not in harmony with the rules of filing offices in other jurisdictions that enact substantially this part and the reasons for these variations; and
3 (2) The filing-office rules are not in harmony with the most recent version of the model rules promulgated by the international association of corporate administrators, or any successor organization, and the reasons for these variations.

PART 6. DEFAULT.
§46-9-601. Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles or promissory notes.

(a) Rights of secured party after default. After default, a secured party has the rights provided in this part and, except as otherwise provided in section 9-602, those provided by agreement of the parties. A secured party:

1. May reduce a claim to judgment, foreclose or otherwise enforce the claim, security interest or agricultural lien by any available judicial procedure; and

2. If the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) Rights and duties of secured party in possession or control. A secured party in possession of collateral or control of collateral under section 9-104, 9-105, 9-106 or 9-107 has the rights and duties provided in section 9-207.

(c) Rights cumulative; simultaneous exercise. The rights under subsections (a) and (b) of this section are cumulative and may be exercised simultaneously.

(d) Rights of debtor and obligor. Except as otherwise provided in subsection (g) of this section and section 9-605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(e) Lien of levy after judgment. If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

1. The date of perfection of the security interest or agricultural lien in the collateral;

2. The date of filing a financing statement covering the collateral; or
(3) Any date specified in a statute under which the agricultural lien was created.

(f) Execution sale. A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this article.

(g) Consignor or buyer of certain rights to payment. Except as otherwise provided in section 9-607(c), this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles or promissory notes.

§46-9-602. Waiver and variance of rights and duties.

Except as otherwise provided in section 9-624, to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following listed sections:

1. Section 9-207(b)(4)(C), which deals with use and operation of the collateral by the secured party;

2. Section 9-210, which deals with requests for an accounting and requests concerning a list of collateral and statement of account;

3. Section 9-607(c), which deals with collection and enforcement of collateral;

4. Sections 9-608(a) and 9-615(c) to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;

5. Sections 9-608(a) and 9-615(d) to the extent that they require accounting for or payment of surplus proceeds of collateral;

6. Section 9-609 to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace;
Section 9-603. Agreement on standards concerning rights and duties.

(a) Agreed standards. The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party under a rule stated in section 9-602 if the standards are not manifestly unreasonable.

(b) Agreed standards inapplicable to breach of peace. Subsection (a) of this section does not apply to the duty under section 9-609 to refrain from breaching the peace.

§46-9-604. Procedure if security agreement covers real property or fixtures.

(a) Enforcement: personal and real property. If a security agreement covers both personal and real property, a secured party may proceed:

(1) Under this part as to the personal property without prejudicing any rights with respect to the real property; or
(2) As to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of this part do not apply.

(b) Enforcement: fixtures. Subject to subsection (c) of this section, if a security agreement covers goods that are or become fixtures, a secured party may proceed:

(1) Under this part; or

(2) In accordance with the rights with respect to real property, in which case the other provisions of this part do not apply.

(c) Removal of fixtures. Subject to the other provisions of this part, if a secured party holding a security interest in fixtures has priority over all owners and encumbrancers of the real property, the secured party, after default, may remove the collateral from the real property.

(d) Injury caused by removal. A secured party that removes collateral shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

§46-9-605. Unknown debtor or secondary obligor.

A secured party does not owe a duty based on its status as secured party:

(1) To a person that is a debtor or obligor, unless the secured party knows:

(A) That the person is a debtor or obligor;

(B) The identity of the person; and

(C) How to communicate with the person; or
(2) To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) That the person is a debtor; and

(B) The identity of the person.


For purposes of this part, a default occurs in connection with an agricultural lien at the time the secured party becomes entitled to enforce the lien in accordance with the statute under which it was created.

§46-9-607. Collection and enforcement by secured party.

(a) Collection and enforcement generally. If so agreed, and in any event after default, a secured party:

(1) May notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;

(2) May take any proceeds to which the secured party is entitled under section 9-315;

(3) May enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;

(4) If it holds a security interest in a deposit account perfected by control under section 9-104(a)(1), may apply the balance of the deposit account to the obligation secured by the deposit account; and

(5) If it holds a security interest in a deposit account perfected by control under section 9-104(a)(2) or (3), may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.
(b) Nonjudicial enforcement of mortgage. If necessary to enable a secured party to exercise under subsection (a)(3) of this section the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:

(1) A copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and

(2) The secured party’s sworn affidavit in recordable form stating that:

(A) A default has occurred; and

(B) The secured party is entitled to enforce the mortgage nonjudicially.

(c) Commercially reasonable collection and enforcement. A secured party shall proceed in a commercially reasonable manner if the secured party:

(1) Undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

(2) Is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

(d) Expenses of collection and enforcement. A secured party may deduct from the collections made pursuant to subsection (c) of this section reasonable expenses of collection and enforcement, including reasonable attorney’s fees and legal expenses incurred by the secured party.

(e) Duties to secured party not affected. This section does not determine whether an account debtor, bank or other person obligated on collateral owes a duty to a secured party.

§46-9-608. Application of proceeds of collection or enforcement; liability for deficiency and right to surplus.

(a) Application of proceeds, surplus and deficiency if obligation secured. If a security interest or agricultural lien
(1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under section 9-607 in the following order to:

(A) The reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(B) The satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

(C) The satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under paragraph (1)(C) of this subsection.

(3) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under section 9-607 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

(b) No surplus or deficiency in sales of certain rights to payment. If the underlying transaction is a sale of accounts, chattel paper, payment intangibles or promissory notes, the
debtor is not entitled to any surplus and the obligor is not liable for any deficiency.

§46-9-609. Secured party’s right to take possession after default.

(a) Possession; rendering equipment unusable; disposition on debtor’s premises. After default, a secured party:

(1) May take possession of the collateral; and

(2) Without removal, may render equipment unusable and dispose of collateral on a debtor’s premises under section 9-610.

(b) Judicial and nonjudicial process. A secured party may proceed under subsection (a) of this section:

(1) Pursuant to judicial process; or

(2) Without judicial process, if it proceeds without breach of the peace.

(c) Assembly of collateral. If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties.

§46-9-610. Disposition of collateral after default.

(a) Disposition after default. After default, a secured party may sell, lease, license or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.

(b) Commercially reasonable disposition. Every aspect of a disposition of collateral, including the method, manner, time, place and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms.

(c) Purchase by secured party. A secured party may purchase collateral:
At a public disposition; or

(2) At a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

(d) **Warranties on disposition.** A contract for sale, lease, license or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like which by operation of law accompany a voluntary disposition of property of the kind subject to the contract.

(e) **Disclaimer of warranties.** A secured party may disclaim or modify warranties under subsection (d) of this section:

(1) In a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or

(2) By communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

(f) **Record sufficient to disclaim warranties.** A record is sufficient to disclaim warranties under subsection (e) of this section if it indicates “There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition” or uses words of similar import.

**§46-9-611. Notification before disposition of collateral.**

(a) **Notification date.** In this section, “notification date” means the earlier of the date on which:

(1) A secured party sends to the debtor and any secondary obligor an authenticated notification of disposition; or

(2) The debtor and any secondary obligor waive the right to notification.

(b) **Notification of disposition required.** Except as otherwise provided in subsection (d) of this section, a secured party that disposes of collateral under section 9-610 shall send
to the persons specified in subsection (c) of this section a
reasonable authenticated notification of disposition.

(c) **Persons to be notified.** To comply with subsection (b),
the secured party shall send an authenticated notification of
disposition to:

1. The debtor;
2. Any secondary obligor; and
3. If the collateral is other than consumer goods:
   1. Any other person from which the secured party has
      received, before the notification date, an authenticated notifica-
      tion of a claim of an interest in the collateral;
   2. Any other secured party or lienholder that, ten days
      before the notification date, held a security interest in or other
      lien on the collateral perfected by the filing of a financing
      statement that:
      1. Identified the collateral;
      2. Was indexed under the debtor's name as of that date;
      3. Was filed in the office in which to file a financing
         statement against the debtor covering the collateral as of that
         date; and
   3. Any other secured party that, ten days before the
      notification date, held a security interest in the collateral
      perfected by compliance with a statute, regulation, or treaty
      described in section 9-311(a).

(d) **Subsection (b) inapplicable: perishable collateral;**
**recognized market.** Subsection (b) of this section does not
apply if the collateral is perishable or threatens to decline
speedily in value or is of a type customarily sold on a recog-
nized market.

(e) **Compliance with subsection (c)(3)(B).** A secured party
complies with the requirement for notification prescribed by
subsection (c)(3)(B) of this section if:
(1) Not later than twenty days or earlier than thirty days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subsection (c)(3)(B) of this section; and

(2) Before the notification date, the secured party:

(A) Did not receive a response to the request for information; or

(B) Received a response to the request for information and sent an authenticated notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

§46-9-612. Timeliness of notification before disposition of collateral.

(a) Reasonable time is question of fact. Except as otherwise provided in subsection (b) of this section, whether a notification is sent within a reasonable time is a question of fact.

(b) Ten-day period sufficient in non-consumer transaction. In a transaction other than a consumer transaction, a notification of disposition sent after default and ten days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition.


Except in a consumer-goods transaction, the following rules apply:

(1) The contents of a notification of disposition are sufficient if the notification:

(A) Describes the debtor and the secured party;

(B) Describes the collateral that is the subject of the intended disposition;
(C) States the method of intended disposition;

(D) States that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

(E) States the time and place of a public disposition or the time after which any other disposition is to be made.

(2) Whether the contents of a notification that lacks any of the information specified in paragraph (1) of this section are nevertheless sufficient is a question of fact.

(3) The contents of a notification providing substantially the information specified in paragraph (1) of this section are sufficient, even if the notification includes:

(A) Information not specified by that paragraph; or

(B) Minor errors that are not seriously misleading.

(4) A particular phrasing of the notification is not required.

(5) The following form of notification and the form appearing in section 9-614(3), when completed, each provides sufficient information:

**NOTIFICATION OF DISPOSITION OF COLLATERAL**

To: [Name of debtor, obligor, or other person to which the notification is sent]

From: [Name, address, and telephone number of secured party]

Name of Debtor(s): [Include only if debtor(s) are not an addressee]

*For a public disposition:*

We will sell or [lease or license, as applicable] the [describe collateral] to the highest qualified bidder in public as follows:

Day and Date: ___________________________
For a private disposition:

We will sell [or lease or license, as applicable] the [describe collateral] privately sometime after [day and date].

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell [or lease or license, as applicable] for a charge of $_________. You may request an accounting by calling us at [telephone number].
NOTICE OF OUR PLAN TO SELL PROPERTY

[Name and address of any obligor who is also a debtor]

Subject: [Identification of Transaction]

We have your [describe collateral], because you broke promises in our agreement.

For a public disposition:

We will sell [describe collateral] at public sale. A sale could include a lease or license. The sale will be held as follows:

Date: __________________________
Time: __________________________
Place: __________________________

You may attend the sale and bring bidders if you want.

For a private disposition:

We will sell [describe collateral] at private sale sometime after [date]. A sale could include a lease or license.

The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you [will or will not, as applicable] still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at [telephone number].

If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at [telephone number] or write us at [secured party's address] and request a written explanation.
If you need more information about the sale call us at [telephone number] or write us at [secured party’s address].

We are sending this notice to the following other people who have an interest in [describe collateral] or who owe money under your agreement:

[Names of all other debtors and obligors, if any]

[End of Form]

(4) A notification in the form of paragraph (3) of this section is sufficient, even if additional information appears at the end of the form.

(5) A notification in the form of paragraph (3) of this section is sufficient, even if it includes errors in information not required by paragraph (1) of this section, unless the error is misleading with respect to rights arising under this article.

(6) If a notification under this section is not in the form of paragraph (3) of this section, law other than this article determines the effect of including information not required by paragraph (1) of this section.

§46-9-615. Application of proceeds of disposition; liability for deficiency and right to surplus.

(a) Application of proceeds. A secured party shall apply or pay over for application the cash proceeds of disposition under section 9-610 in the following order to:

(1) The reasonable expenses of retaking, holding, preparing for disposition, processing and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney’s fees and legal expenses incurred by the secured party;

(2) The satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;
(3) The satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

(A) The secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and

(B) In a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

(4) A secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

(b) Proof of subordinate interest. If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder’s demand under subsection (a)(3).

(c) Application of noncash proceeds. A secured party need not apply or pay over for application noncash proceeds of disposition under section 9-610 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) Surplus or deficiency if obligation secured. If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (a) of this section and permitted by subsection (c) of this section:

(1) Unless subsection (a)(4) of this section requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and
(2) The obligor is liable for any deficiency.

(e) No surplus or deficiency in sales of certain rights to payment. If the underlying transaction is a sale of accounts, chattel paper, payment intangibles or promissory notes:

(1) The debtor is not entitled to any surplus; and

(2) The obligor is not liable for any deficiency.

(f) Calculation of surplus or deficiency in disposition to person related to secured party. The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with this part to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if:

(1) The transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor; and

(2) The amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(g) Cash proceeds received by junior secured party. A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:

(1) Takes the cash proceeds free of the security interest or other lien;

(2) Is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and

(3) Is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

§46-9-616. Explanation of calculation of surplus or deficiency.

(a) Definitions. In this section:
(1) "Explanation" means a writing that:
   (A) States the amount of the surplus or deficiency;
   (B) Provides an explanation in accordance with subsection (c) of this section of how the secured party calculated the surplus or deficiency;
   (C) States, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency; and
   (D) Provides a telephone number or mailing address from which additional information concerning the transaction is available.

(2) "Request" means a record:
   (A) Authenticated by a debtor or consumer obligor;
   (B) Requesting that the recipient provide an explanation; and
   (C) Sent after disposition of the collateral under section 9-610.

(b) Explanation of calculation. In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under section 9-615, the secured party shall:

(1) Send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:

   (A) Before or when the secured party accounts to the debtor and pays any surplus or first makes written demand on the consumer obligor after the disposition for payment of the deficiency; and

   (B) Within fourteen days after receipt of a request; or

(2) In the case of a consumer obligor who is liable for a deficiency, within fourteen days after receipt of a request, send
to the consumer obligor a record waiving the secured party's right to a deficiency.

(c) **Required information.** To comply with subsection (a)(1)(B) of this section, a writing must provide the following information in the following order:

(1) The aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:

(A) If the secured party takes or receives possession of the collateral after default, not more than thirty-five days before the secured party takes or receives possession; or

(B) If the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than thirty-five days before the disposition;

(2) The amount of proceeds of the disposition;

(3) The aggregate amount of the obligations after deducting the amount of proceeds;

(4) The amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney’s fees secured by the collateral which are known to the secured party and relate to the current disposition;

(5) The amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and which are not reflected in the amount in paragraph (1) of this subsection; and

(6) The amount of the surplus or deficiency.

(d) **Substantial compliance.** A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of subsection (a) of this section is sufficient, even if it includes minor errors that are not seriously misleading.
(e) Charges for responses. A debtor or consumer obligor is entitled without charge to one response to a request under this section during any six-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to subdivision (1), subsection (b) of this section. The secured party may require payment of a charge not exceeding twenty-five dollars for each additional response.

§46-9-617. Rights of transferee of collateral.

(a) Effects of disposition. A secured party’s disposition of collateral after default:

(1) Transfers to a transferee for value all of the debtor’s rights in the collateral;

(2) Discharges the security interest under which the disposition is made; and

(3) Discharges any subordinate security interest or other subordinate lien.

(b) Rights of good-faith transferee. A transferee that acts in good faith takes free of the rights and interests described in subsection (a) of this section, even if the secured party fails to comply with this article or the requirements of any judicial proceeding.

(c) Rights of other transferee. If a transferee does not take free of the rights and interests described in subsection (a) of this section, the transferee takes the collateral subject to:

(1) The debtor’s rights in the collateral;

(2) The security interest or agricultural lien under which the disposition is made; and

(3) Any other security interest or other lien.


(a) Rights and duties of secondary obligor. A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor:
(1) Receives an assignment of a secured obligation from the secured party;

(2) Receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or

(3) Is subrogated to the rights of a secured party with respect to collateral.

(b) **Effect of assignment, transfer or subrogation.** An assignment, transfer or subrogation described in subsection (a) of this section:

(1) Is not a disposition of collateral under section 9-610; and

(2) Relieves the secured party of further duties under this article.

§46-9-619. **Transfer of record or legal title.**

(a) "**Transfer statement.**" In this section, "transfer statement" means a record authenticated by a secured party stating:

(1) That the debtor has defaulted in connection with an obligation secured by specified collateral;

(2) That the secured party has exercised its post-default remedies with respect to the collateral;

(3) That, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and

(4) The name and mailing address of the secured party, debtor and transferee.

(b) **Effect of transfer statement.** A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office
responsible for maintaining the system, the official or office shall:

(1) Accept the transfer statement;
(2) Promptly amend its records to reflect the transfer; and
(3) If applicable, issue a new appropriate certificate of title in the name of the transferee.

(c) Transfer not a disposition; no relief of secured party’s duties. A transfer of the record or legal title to collateral to a secured party under subsection (b) of this section or otherwise is not of itself a disposition of collateral under this article and does not of itself relieve the secured party of its duties under this article.

§46-9-620. Acceptance of collateral in full or partial satisfaction of obligation; compulsory disposition of collateral.

(a) Conditions to acceptance in satisfaction. Except as otherwise provided in subsection (g) of this section, a secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:

(1) The debtor consents to the acceptance under subsection (c) of this section;
(2) The secured party does not receive, within the time set forth in subsection (d) of this section, a notification of objection to the proposal authenticated by:
(A) A person to which the secured party was required to send a proposal under section 9-621; or
(B) Any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal;
(3) If the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance; and
(4) Subsection (e) of this section does not require the secured party to dispose of the collateral or the debtor waives the requirement pursuant to section 9-624.

(b) Purported acceptance ineffective. A purported or apparent acceptance of collateral under this section is ineffective unless:

(1) The secured party consents to the acceptance in an authenticated record or sends a proposal to the debtor; and

(2) The conditions of subsection (a) of this section are met.

(c) Debtor's consent. For purposes of this section:

(1) A debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default; and

(2) A debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default or the secured party:

(A) Sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;

(B) In the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and

(C) Does not receive a notification of objection authenticated by the debtor within twenty days after the proposal is sent.

(d) Effectiveness of notification. To be effective under subsection (a)(2) of this section, a notification of objection must be received by the secured party:

(1) In the case of a person to which the proposal was sent pursuant to section 9-621, within twenty days after notification was sent to that person; and
In other cases:

(A) Within twenty days after the last notification was sent pursuant to section 9-621; or

(B) If a notification was not sent, before the debtor consents to the acceptance under subsection (c) of this section.

(e) Mandatory disposition of consumer goods. A secured party that has taken possession of collateral shall dispose of the collateral pursuant to section 9-610 within the time specified in subsection (f) of this section if:

(1) Sixty percent of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or

(2) Sixty percent of the principal amount of the obligation secured has been paid in the case of a non-purchase-money security interest in consumer goods.

(f) Compliance with mandatory disposition requirement. To comply with subsection (e) of this section, the secured party shall dispose of the collateral:

(1) Within ninety days after taking possession; or

(2) Within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and authenticated after default.

(g) No partial satisfaction in consumer transaction. In a consumer transaction, a secured party may not accept collateral in partial satisfaction of the obligation it secures.

§46-9-621. Notification of proposal to accept collateral.

(a) Persons to which proposal to be sent. A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:

(1) Any person from which the secured party has received, before the debtor consented to the acceptance, an authenticated notification of a claim of an interest in the collateral;
(2) Any other secured party or lienholder that, ten days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(A) Identified the collateral;

(B) Was indexed under the debtor's name as of that date; and

(C) Was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date; and

(3) Any other secured party that, ten days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation or treaty described in section 9-311(a).

(b) Proposal to be sent to secondary obligor in partial satisfaction. A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons described in subsection (a) of this section.

§46-9-622. Effect of acceptance of collateral.

(a) Effect of acceptance. A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures:

(1) Discharges the obligation to the extent consented to by the debtor;

(2) Transfers to the secured party all of a debtor's rights in the collateral;

(3) Discharges the security interest or agricultural lien that is the subject of the debtor's consent and any subordinate security interest or other subordinate lien; and

(4) Terminates any other subordinate interest.

(b) Discharge of subordinate interest notwithstanding noncompliance. A subordinate interest is discharged or
terminated under subsection (a) of this section, even if the
secured party fails to comply with this article.

§46-9-623. Right to redeem collateral.

(a) **Persons that may redeem.** A debtor, any secondary
obligor, or any other secured party or lienholder may redeem
the collateral.

(b) **Requirements for redemption.** To redeem collateral,
a person shall tender:

(1) Fulfillment of all obligations secured by the collateral;
and

(2) The reasonable expenses and attorney’s fees described
in section 9-615(a)(1).

(c) **When redemption may occur.** A redemption may
occur at any time before a secured party:

(1) Has collected collateral under section 9-607;

(2) Has disposed of collateral or entered into a contract for
its disposition under section 9-610; or

(3) Has accepted collateral in full or partial satisfaction of
the obligation it secures under section 9-622.

§46-9-624. Waiver.

(a) **Waiver of disposition notification.** A debtor or
secondary obligor may waive the right to notification of
disposition of collateral under section 9-611 only by an
agreement to that effect entered into and authenticated after
default.

(b) **Waiver of mandatory disposition.** A debtor may waive
the right to require disposition of collateral under section 9-
620(e) only by an agreement to that effect entered into and
authenticated after default.

(c) **Waiver of redemption right.** Except in a consumer-
goods transaction, a debtor or secondary obligor may waive the
right to redeem collateral under section 9-623 only by an
agreement to that effect entered into and authenticated after default.

SUBPART 2. NONCOMPLIANCE WITH ARTICLE.

§46-9-625. Remedies for secured party’s failure to comply with article.

(a) Judicial orders concerning noncompliance. If it is established that a secured party is not proceeding in accordance with this article, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(b) Damages for noncompliance. Subject to subsections (c), (d) and (f) of this section, a person is liable for damages in the amount of any loss caused by a failure to comply with this article. Loss caused by a failure to comply may include loss resulting from the debtor’s inability to obtain, or increased costs of, alternative financing.

(c) Persons entitled to recover damages; statutory damages in consumer-goods transaction. Except as otherwise provided in section 9-628:

(1) A person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (b) of this section for its loss; and

(2) If the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus ten percent of the principal amount of the obligation or the time-price differential plus ten percent of the cash price.

(d) Recovery when deficiency eliminated or reduced. A debtor whose deficiency is eliminated under section 9-626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under section 9-626 may not otherwise recover under subsection (b) of this section for noncompliance with the provisions
of this part relating to collection, enforcement, disposition or  
acceptance.

(e) Statutory damages: noncompliance with specified  
provisions. In addition to any damages recoverable under  
subsection (b) of this section, the debtor, consumer obligor or  
person named as a debtor in a filed record, as applicable, may  
recover five hundred dollars in each case from a person that:

(1) Fails to comply with section 9-208;

(2) Fails to comply with section 9-209;

(3) Files a record that the person is not entitled to file under  
section 9-509(a);

(4) Fails to cause the secured party of record to file or send  
a termination statement as required by section 9-513(a) or (c);

(5) Fails to comply with section 9-616(b)(1) and whose  
failure is part of a pattern, or consistent with a practice, of  
noncompliance; or

(6) Fails to comply with section 9-616(b)(2).

(f) Statutory damages: noncompliance with section 9-  
210. A debtor or consumer obligor may recover damages under  
subsection (b) of this section and, in addition, five hundred  
dollars in each case from a person that, without reasonable  
cause, fails to comply with a request under section 9-210. A  
recipient of a request under section 9-210 which never claimed  
an interest in the collateral or obligations that are the subject of  
a request under that section has a reasonable excuse for failure  
to comply with the request within the meaning of this subsec-

(g) Limitation of security interest: noncompliance with  
section 9-210. If a secured party fails to comply with a request  
regarding a list of collateral or a statement of account under  
section 9-210, the secured party may claim a security interest  
only as shown in the list or statement included in the request as  
against a person that is reasonably misled by the failure.

§46-9-626. Action in which deficiency or surplus is in issue.
(a) Applicable rules if amount of deficiency or surplus in issue. In an action arising from a transaction, other than a consumer transaction, in which the amount of a deficiency or surplus is in issue, the following rules apply:

(1) A secured party need not prove compliance with the provisions of this part relating to collection, enforcement, disposition or acceptance unless the debtor or a secondary obligor places the secured party’s compliance in issue.

(2) If the secured party’s compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition or acceptance was conducted in accordance with this part.

(3) Except as otherwise provided in section 9-628, if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorney’s fees exceeds the greater of:

(A) The proceeds of the collection, enforcement, disposition or acceptance; or

(B) The amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

(4) For purposes of paragraph (3)(B) of this subsection, the amount of proceeds that would have been realized is equal to the sum of the secured obligation, expenses and attorney’s fees unless the secured party proves that the amount is less than that sum.

(5) If a deficiency or surplus is calculated under section 9-615(f), the debtor or obligor has the burden of establishing that the amount of proceeds of the disposition is significantly below the range of prices that a complying disposition to a
person other than the secured party, a person related to the
secured party, or a secondary obligor would have brought.

(b) Non-consumer transactions; no inference. The
limitation of the rules in subsection (a) of this section to
transactions other than consumer transactions is intended to
leave to the court the determination of the proper rules in
consumer transactions. The court may not infer from that
limitation the nature of the proper rule in consumer transactions
and may continue to apply established approaches.

§46-9-627. Determination of whether conduct was commercially
reasonable.

(a) Greater amount obtainable under other circum-
stances; no preclusion of commercial reasonableness. The
fact that a greater amount could have been obtained by a
collection, enforcement, disposition or acceptance at a different
time or in a different method from that selected by the secured
party is not of itself sufficient to preclude the secured party
from establishing that the collection, enforcement, disposition
or acceptance was made in a commercially reasonable manner.

(b) Dispositions that are commercially reasonable. A
disposition of collateral is made in a commercially reasonable
manner if the disposition is made:

(1) In the usual manner on any recognized market;

(2) At the price current in any recognized market at the time
of the disposition; or

(3) Otherwise in conformity with reasonable commercial
practices among dealers in the type of property that was the
subject of the disposition.

(c) Approval by court or on behalf of creditors. A
collection, enforcement, disposition, or acceptance is commer-
cially reasonable if it has been approved:

(1) In a judicial proceeding;

(2) By a bona fide creditors’ committee;
(3) By a representative of creditors; or
(4) By an assignee for the benefit of creditors.

(d) Approval under subsection (c) not necessary; absence of approval has no effect. Approval under subsection (c) of this section need not be obtained and lack of approval does not mean that the collection, enforcement, disposition or acceptance is not commercially reasonable.

§46-9-628. Nonliability and limitation on liability of secured party; liability of secondary obligor.

(a) Limitation of liability of secured party for noncompliance with article. Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person and knows how to communicate with the person:

(1) The secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this article; and

(2) The secured party’s failure to comply with this article does not affect the liability of the person for a deficiency.

(b) Limitation of liability based on status as secured party. A secured party is not liable because of its status as secured party:

(1) To a person that is a debtor or obligor, unless the secured party knows:

(A) That the person is a debtor or obligor;
(B) The identity of the person; and
(C) How to communicate with the person; or

(2) To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) That the person is a debtor; and
(B) The identity of the person.
(c) Limitation of liability if reasonable belief that transaction not a consumer-goods transaction or consumer transaction. A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

(1) A debtor's representation concerning the purpose for which collateral was to be used, acquired or held; or

(2) An obligor's representation concerning the purpose for which a secured obligation was incurred.

(d) Limitation of liability for statutory damages. A secured party is not liable to any person under section 9-625(c)(2) for its failure to comply with section 9-616.

(e) Limitation of multiple liability for statutory damages. A secured party is not liable under section 9-625(c)(2) more than once with respect to any one secured obligation.

PART 7. TRANSITION.

§46-9-701. Effective date.

This article takes effect on the first day of July, two thousand one.

§46-9-702. Savings clause.

(a) Pre-effective-date transactions or liens. Except as otherwise provided in this part, this article applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before this article takes effect.

(b) Continuing validity. Except as otherwise provided in subsection (c) of this section and sections 9-703 through 9-709:

(1) Transactions and liens that were not governed by former article nine, were validly entered into or created before this article takes effect and would be subject to this article if they
had been entered into or created after this article takes effect, and the rights, duties and interests flowing from those transactions and liens remain valid after this article takes effect; and

(2) The transactions and liens may be terminated, completed, consummated and enforced as required or permitted by this article or by the law that otherwise would apply if this article had not taken effect.

(c) **Pre-effective-date proceedings.** This article does not affect an action, case or proceeding commenced before this article takes effect.

§46-9-703. Security interest perfected before effective date.

(a) **Continuing priority over lien creditor: perfection requirements satisfied.** A security interest that is enforceable immediately before this article takes effect and would have priority over the rights of a person that becomes a lien creditor at that time is a perfected security interest under this article if, when this article takes effect, the applicable requirements for enforceability and perfection under this article are satisfied without further action.

(b) **Continuing priority over lien creditor: perfection requirements not satisfied.** Except as otherwise provided in section 9-705, if, immediately before this article takes effect, a security interest is enforceable and would have priority over the rights of a person that becomes a lien creditor at that time, but the applicable requirements for enforceability or perfection under this article are not satisfied when this article takes effect, the security interest:

(1) Is a perfected security interest for two years after this article takes effect;

(2) Remains enforceable thereafter only if the security interest becomes enforceable under section 9-203 before the second year expires; and

(3) Remains perfected thereafter only if the applicable requirements for perfection under this article are satisfied before the second year expires.
§46-9-704. Security interest unperfected before effective date.

A security interest that is enforceable immediately before this article takes effect but which would be subordinate to the rights of a person that becomes a lien creditor at that time:

1. Remains an enforceable security interest for two years after this article takes effect;

2. Remains enforceable thereafter if the security interest becomes enforceable under section 9-203 when this article takes effect or within two years thereafter; and

3. Becomes perfected:
   (A) Without further action, when this article takes effect if the applicable requirements for perfection under this article are satisfied before or at that time; or
   (B) When the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

§46-9-705. Effectiveness of action taken before effective date.

(a) Pre-effective-date action; two-year perfection period unless reperfected. If action, other than the filing of a financing statement, is taken before this article takes effect and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before this article takes effect, the action is effective to perfect a security interest that attaches under this article within two years after this article takes effect. An attached security interest becomes unperfected two years after this article takes effect unless the security interest becomes a perfected security interest under this article before the expiration of that period.

(b) Pre-effective-date filing. The filing of a financing statement before this article takes effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this article.

(c) Pre-effective-date filing in jurisdiction formerly governing perfection. This article does not render ineffective
an effective financing statement that, before this article takes
effect, is filed and satisfies the applicable requirements for
perfection under the law of the jurisdiction governing perfection
as provided in former section 9-103. However, except as
otherwise provided in subsections (d) and (e) of this section and
section 9-706, the financing statement ceases to be effective at
the earlier of:

(1) The time the financing statement would have ceased to
be effective under the law of the jurisdiction in which it is filed;
or

(2) The thirtieth day of June, two thousand six.

(d) **Continuation statement.** The filing of a continuation
statement after this article takes effect does not continue the
effectiveness of the financing statement filed before this article
takes effect. However, upon the timely filing of a continuation
statement after this article takes effect and in accordance with
the law of the jurisdiction governing perfection as provided in
part 3, the effectiveness of a financing statement filed in the
same office in that jurisdiction before this article takes effect
continues for the period provided by the law of that jurisdiction.

(e) **Application of subsection (c)(2) to transmitting utility financing statement.** Subsection (c)(2) of this section
applies to a financing statement that, before this article takes
effect, is filed against a transmitting utility and satisfies the
applicable requirements for perfection under the law of the
jurisdiction governing perfection as provided in former section
9-103 only to the extent that part 3 provides that the law of a
jurisdiction other than jurisdiction in which the financing
statement is filed governs perfection of a security interest in
collateral covered by the financing statement.

(f) **Application of part 5.** A financing statement that
includes a financing statement filed before this article takes
effect and a continuation statement filed after this article takes
effect is effective only to the extent that it satisfies the require-
ments of part 5 for an initial financing statement.
§46-9-706. When initial financing statement suffices to continue effectiveness of financing statement.

(a) Initial financing statement in lieu of continuation statement. The filing of an initial financing statement in the office specified in section 9-501 continues the effectiveness of a financing statement filed before this article takes effect if:

1. The filing of an initial financing statement in that office would be effective to perfect a security interest under this article;
2. The pre-effective-date financing statement was filed in an office in another state or another office in this state; and
3. The initial financing statement satisfies subsection (c) of this section.

(b) Period of continued effectiveness. The filing of an initial financing statement under subsection (a) of this section continues the effectiveness of the pre-effective-date financing statement:

1. If the initial financing statement is filed before this article takes effect, for the period provided in former section 9-403 with respect to a financing statement; and
2. If the initial financing statement is filed after this article takes effect, for the period provided in section 9-515 with respect to an initial financing statement.

(c) Requirements for initial financing statement under subsection (a). To be effective for purposes of subsection (a) of this section, an initial financing statement must:

1. Satisfy the requirements of part 5 for an initial financing statement;
2. Identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and
§46-9-707. Amendment of pre-effective-date financing statement.

(a) "Pre-effective-date financing statement". In this section, "pre-effective-date financing statement" means a financing statement filed before this article takes effect.

(b) Applicable law. After this article takes effect, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in part 3. However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) Method of amending: general rule. Except as otherwise provided in subsection (d) of this section, if the law of this state governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after this article takes effect only if:

(1) The pre-effective-date financing statement and an amendment are filed in the office specified in section 9-501;

(2) An amendment is filed in the office specified in section 9-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies section 9-706(c); or

(3) An initial financing statement that provides the information as amended and satisfies section 9-706(c) is filed in the office specified in section 9-501.

(d) Method of amending: continuation. If the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under section 9-705(d) and (f) or 9-706.

(e) Method of amending: additional termination rule. Whether or not the law of this state governs perfection of a
security interest, effectiveness of a pre-effective-date financing
statement filed in this state may be terminated after this article
takes effect by filing a termination statement in the office in
which the pre-effective-date financing statement is filed, unless
an initial financing statement that satisfies section 9-706(c) has
been filed in the office specified by the law of the jurisdiction
governing perfection as provided in part 3 as the office in which
to file a financing statement.

§46-9-708. Persons entitled to file initial financing statement or
continuation statement.

A person may file an initial financing statement or a
continuation statement under this part if:

(1) The secured party of record authorizes the filing; and

(2) The filing is necessary under this part:

(A) To continue the effectiveness of a financing statement
filed before this article takes effect; or

(B) To perfect or continue the perfection of a security
interest.


(a) Law governing priority. This article determines the
priority of conflicting claims to collateral. However, if the
relative priorities of the claims were established before this
article takes effect, former article nine determines priority.

(b) Priority if security interest becomes enforceable
under section 9-203. For purposes of section 9-322(a), the
priority of a security interest that becomes enforceable under
section 9-203 of this article dates from the time this article
takes effect if the security interest is perfected under this article
by the filing of a financing statement before this article takes
effect which would not have been effective to perfect the
security interest under former article nine. This subsection does
not apply to conflicting security interests each of which is
perfected by the filing of such a financing statement.
CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-119a. Secured transaction; use of price guide value in calculating deficiency or surplus.

(a) This section applies to the following transactions:

(1) Transactions in which a purchase money security interest is taken in collateral which is being purchased primarily for a personal, family, household or agricultural purpose;

(2) Transactions in which a security interest is taken in collateral which was used primarily for a personal, family, household or agricultural purpose prior to the giving the security interest; or

(3) Transactions in which a security interest is taken in collateral for a debt that was incurred primarily for a personal, family, household or agricultural purpose.

(b) This section takes effect on the first day of July, two thousand two, and is applicable notwithstanding the provisions of:

(1) Section six hundred ten, article nine, chapter forty-six of this code, providing that disposition may only be by certain public or private sale, lease or license procedures;

(2) Section six hundred ten, article nine, chapter forty-six of this code, requiring that those procedures be commercially reasonable;

(3) Section six hundred fifteen, article nine, chapter forty-six of this code, providing for the application of the proceeds;

(4) Section six hundred twenty, article nine, chapter forty-six of this code, requiring disposition by sale, lease or license in certain circumstances; and

(5) Section six hundred two, article nine, chapter forty-six of this code, providing that these sections may not be waived or varied by agreement.

*Clerk's Note: This section was amended to bring it into conformity with the newly enacted article nine, chapter forty-six, which will take effect July 1, 2001.
(c) For purposes of this section, the term "debtor" shall be deemed to refer collectively to each person who is indebted to a secured creditor in connection with a consumer lease or consumer loan, whether the person's obligation arises as a co-maker, endorser or guarantor of the lease or loan.

(d) After a default by the debtor and after the secured creditor takes or receives possession of collateral or makes collateral unusable as provided in section six hundred nine, article nine, chapter forty-six of this code, the secured creditor may send a written proposal to the debtor setting forth a value for the secured creditor's collateral which value, less any expenses of taking and holding the collateral, shall be credited against the debtor's obligation to the secured creditor. The written proposal must explain that:

1. The proposal becomes effective only if the debtor agrees to it in writing but the debtor is not required to agree to the written proposal;

2. If the debtor does not agree to the proposal in writing, then the goods which are the subject of the written proposal will be disposed of in a "commercially reasonable" manner by the secured creditor in accordance with applicable law, and the amount received from the disposition of the collateral, less the expenses of taking and holding the collateral, preparing the collateral of the sale or lease, and selling the collateral, will be the amount credited against the debtor's obligation to the secured creditor when calculating the deficiency owed by the debtor to the secured creditor or the surplus owed by the secured creditor to the debtor;

3. If the debtor agrees to the written proposal, then the debtor will thereby release and waive any claims against the secured creditor that the disposition of the collateral was not commercially reasonable or was otherwise improper; and

4. The written proposal may set forth a date and time by which the debtor's written agreement must be received by the secured creditor in order for the agreement to become effective.
(5) The following form, when reproduced on a single sheet of paper with no other statements or agreements and accurately completed, meets the requirements of this section even if it contains typographical or other minor errors that are not misleading:

[Name and address of secured party]
[Date]

TO: [Name and address of debtor]

OFFER TO CREDIT PRICE GUIDE VALUE

We have possession of your [describe collateral] ("property") (or we have made it unusable by you), because you broke the terms of our agreement.

By law, we may sell, lease or license this property in any commercially reasonable manner. If we choose to sell the property at a public sale we will give you notice of the date, time and place of the sale and you may attend the sale and bring bidders if you want. If we choose to sell the property at a private sale we will give you notice of the date after which the sale will take place. From the money we are paid from the sale of the property, we may subtract our expenses in getting the property from you, storing it, preparing and selling, leasing or licensing it. The sale money left over after these expenses are subtracted will then be subtracted from what you owe us. If we receive less money than you owe, you will still owe us the difference. If we receive more money than you owe, you will get the extra money back (unless we are required to pay it to someone else).

Instead of selling, leasing or licensing this property, we are now offering to subtract the amount of $[enter amount] from what you owe us. We have calculated this amount by adding the retail value of the property of $[insert retail value] and the [insert other value pursuant to § 46A-2-119a(5)] value of the property of $[enter amount] and dividing that total by 2 ("value amount"). These values were obtained from ____________, a price guide in general use as of the date we got possession of or
rendered the property unusable by you. From the value amount we have subtracted our expenses of $[enter amount] in taking back the property from you, and our expenses of $[enter amount] for storing the property through the date below by which you must respond to this offer.

You do not have to accept this offer. To agree to our offer, you must sign this notice at the bottom no sooner than one day after the date on which you received this offer and deliver it or have it delivered to us before [enter date by which the secured party determines the offer must be accepted]. If you agree to this offer, you are giving up any right to hold us liable for the way that we sell, lease or otherwise dispose of the property and account for the proceeds.

You can get the property back at any time before you accept this offer or we sell, lease or license the property by paying us the full amount you owe (not just the past due payments), including our expenses so far. To learn the exact amount you must pay, you may call us at [telephone number]. If you want us to explain to you in writing how we calculated the amount that you owe us, you may call us at [telephone number] or write us at [secured party’s address] and request a written explanation.

[We are sending this notice to the following other people who owe money under our agreement. They will also have to agree to our offer or we will sell the property as we normally do.]

[Names of all other debtors and obligors, if any]]

I accept the offer:

Signed ____________________________

Date of signature ____________________

[End of Form]

(e) (1) The value of the collateral set forth in the written proposal shall be determined from any price guide used generally by persons who are not purchasers or lessees of that
type of collateral and who insure, lend money for the purchase of, lease or otherwise deal in goods of the same type as the collateral when it would be to the advantage of the user for the price guide to have higher values.

(2) The value of the collateral set forth in the written proposal shall be determined as of the date the secured party took possession of the collateral, received possession of the collateral or rendered the collateral unusable.

(3) For a motor vehicle, as that term is defined by section one, article one, chapter seventeen-a of this code, the value of the motor vehicle collateral shall be calculated by adding together the retail value and the trade-in value for the motor vehicle and dividing that sum by two.

(4) For a manufactured home, mobile home or house trailer, as those terms are defined in section one, article six, chapter seventeen-a of this code, which at the time of default was located on a lot owned by the debtor, an obligor or a person related to the debtor, the value of the manufactured home, mobile home or house trailer collateral shall be calculated by adding together the retail value and the wholesale value designated for the manufactured home that is moved for resale, mobile home or house trailer and dividing that sum by two.

(5) For a manufactured home, mobile home or house trailer, as those terms are defined in section one, article six, chapter seventeen-a of this code, which at the time of default was located on a lot owned by a person or organization in the business of renting or leasing lots or on a lot owned by a person who is not the debtor, an obligor or a person related to the debtor or obligor, the value of the manufactured home, mobile home or house trailer collateral shall be calculated by adding together the retail value and the wholesale value designated for collateral that is offered for sale without moving the collateral from its current location, and dividing that sum by two.

(6) For other personal property, the value of the collateral shall be calculated by adding together the used retail value and
the highest listed wholesale value for the property and dividing that sum by two.

(f) If the debtor agrees in writing to the written proposal within the time period prescribed by the secured creditor, then:

(1) The collateral value as calculated in subsection (e) above, less any expenses of taking and holding the collateral, shall be applied to the indebtedness as provided in section six hundred fifteen, article nine, chapter forty-six of this code;

(2) Any expenses incurred by the secured creditor in the actual sale or lease of the collateral or preparing the collateral for sale or lease may not be charged to the debtor but must be born by the secured creditor; and

(3) The secured creditor is not required to dispose of the collateral in a commercially reasonable manner and is not liable for any failure to comply with any law of this state relating to the disposition of the collateral or application of the proceeds.

(g) The written agreement of the debtor is not valid unless it is signed by the debtor on or after the next calendar day after it is received by the debtor or the second calendar day after it was sent to the debtor.

(h) If the debtor is more than one person, then the secured creditor must send the proposal described in subsection (d) of this section to all such persons. If any one of the persons indebted to a secured creditor on a consumer lease or consumer loan does not agree in writing to the proposal or does not respond timely to the proposal, then the secured creditor must proceed with a sale or other disposition of its collateral as provided in article nine, chapter forty-six of this code.

(i) If a person other than the debtor has a recorded ownership interest in property securing the debtor's obligation to a secured creditor and such other person is not also indebted to the secured creditor on such obligation, then the secured creditor must send a copy of the proposal described in subsection (d) of this section to such other person but is not required
to obtain such other person's consent or agreement to the proposal in order to effect the proposal.

(j) Upon receipt of the debtor's executed acceptance of a written proposal described in subsection (d) of this section, title to the collateral described in the proposal shall be deemed to pass to the secured creditor unless such collateral is a vehicle, manufactured home, mobile home or house trailer.

(k) Upon presentation of the debtor's executed acceptance of a written proposal described in subsection (d) of this section to the department of motor vehicles and a certificate of title to the debtor's vehicle, manufactured home, mobile home or house trailer described in the written proposal, the department of motor vehicles shall issue a new certificate of title to the vehicle, manufactured home, mobile home or house trailer in the name of the secured creditor as the owner thereof.

(l) Nothing in this section may be construed to create, directly or indirectly, or impose a duty on the secured creditor to make a written offer or give notice under this section. A secured creditor's failure to make a written proposal shall not subject the secured creditor to any liability to the debtor or any other person.

(m) The provisions of this section may not be waived or varied.

CHAPTER 273

(Com. Sub. for H. B. 4494 — By Delegates Stemple, Doyle, Jenkins, Yeager and Stalnaker)

[Passed March 10, 2000; in effect July 1, 2000. Approved by the Governor.]

AN ACT to repeal article six, chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said code by adding thereto a new chapter,
designated chapter forty-four-b, relating to revising the uniform principal and income act.

Be it enacted by the Legislature of West Virginia:

That article six, chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that said code be further amended by adding thereto a new chapter, designated chapter forty-four-b, to read as follows:

CHAPTER 44B. UNIFORM PRINCIPAL AND INCOME ACT.

ARTICLE 1. DEFINITIONS AND FIDUCIARY DUTIES.


§44B-1-102. Definitions.

§44B-1-103. Fiduciary duties; general principles.

§44B-1-104. Trustee's power to adjust.

§44B-1-105. Trustee's Right to Give Notice.


1 This chapter may be cited as the “Uniform Principal and Income Act”.

§44B-1-102. Definitions.

1 (a) “Accounting period” means a calendar year unless another twelve-month period is selected by a fiduciary. The term includes a portion of a calendar year or other twelve-month period that begins when an income interest begins or ends when an income interest ends.
(b) "Beneficiary" includes, in the case of a decedent's estate, an heir, legatee and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary.

(c) "Fiduciary" means a personal representative or a trustee. The term includes an executor, administrator, successor personal representative, special administrator and a person performing substantially the same function.

(d) "Income" means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange or liquidation of a principal asset, to the extent provided in article four of this chapter.

(e) "Income beneficiary" means a person to whom net income of a trust is or may be payable.

(f) "Income interest" means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee's discretion.

(g) "Mandatory income interest" means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

(h) "Net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under this chapter to or from income during the period.

(i) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency or instrumentality; public corporation; or any other legal or commercial entity.
(j) "Principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates.

(k) "Remainder beneficiary" means a person entitled to receive principal when an income interest ends.

(l) "Terms of a trust" means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.

(m) "Trustee" includes an original, additional or successor trustee, whether or not appointed or confirmed by a court.

§44B-1-103. Fiduciary duties; general principles.

(a) In allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of articles two and three of this chapter, a fiduciary:

(1) Shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this chapter;

(2) May administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by this chapter, and no inference that the fiduciary has improperly exercised the discretion arises from the fact that the fiduciary has made an allocation contrary to a provision of this chapter;

(3) Shall administer a trust or estate in accordance with this chapter if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration; and

(4) Shall add a receipt or charge a disbursement to principal to the extent that the terms of the trust and this chapter do not
provide a rule for allocating the receipt or disbursement to or between principal and income.

(b) In exercising the power to adjust under subsection (a), section one hundred four of this article, or a discretionary power of administration regarding a matter within the scope of this chapter, whether granted by the terms of a trust, a will or this chapter, including the trustee's power to adjust under subsection (a), section one hundred four of this article, a fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor one or more of the beneficiaries. The exercise of discretion in accordance with this chapter is presumed to be fair and reasonable to all of the beneficiaries.

§44B-1-104. Trustee's power to adjust.

(a) Subject to the provisions of subsection (b) of this section, a trustee may make an adjustment between principal and income to the extent the trustee considers necessary if all of the following conditions are satisfied:

(1) The trustee invests and manages trust assets under the prudent investor rule.

(2) The trust describes the amount that shall or may be distributed to a beneficiary by referring to the trust's income.

(3) The trustee determines, after applying the rules in subsection (a), section one hundred three of this article, and considering any power the trustee may have under the trust to invade principal or accumulate income, that the trustee is unable to comply with subsection (b), section one hundred three of this article.

(b) A trustee may not make an adjustment between principal and income in any of the following circumstances:
(1) Where it would diminish the income interest in a trust (A) that requires all of the income to be paid at least annually to a spouse and (B) for which, if the trustee did not have the power to make the adjustment, an estate tax or gift tax marital deduction would be allowed, in whole or in part.

(2) Where it would reduce the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion.

(3) Where it would change the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets.

(4) Where it would be made from any amount that is permanently set aside for charitable purposes under a will or trust, unless both income and principal are so set aside.

(5) Where possessing or exercising the power to make an adjustment would cause an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment.

(6) Where possessing or exercising the power to make an adjustment would cause all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment.

(7) Where the trustee is a beneficiary of the trust.

(c) Notwithstanding any provision to the contrary, if subdivision (5), (6), or (7) of subsection (b) of this section applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the
adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the trust.

(d) A trustee may release the entire power conferred by subsection (a) of this section or may release only the power to adjust from income to principal or the power to adjust from principal to income in either of the following circumstances:

(1) If the trustee is uncertain about whether possessing or exercising the power will cause a result described in subdivisions (1) to (6), inclusive, of subsection (b) of this section.

(2) If the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (b) of this section.

(e) A release under subsection (d) of this section may be permanent or for a specified period, including a period measured by the life of an individual.

(f) A trust that limits the power of a trustee to make an adjustment between principal and income does not affect the application of this section unless it is clear from the trust that it is intended to deny the trustee the power of adjustment provided by subsection (a) of this section.

(g) Nothing in this section or in this chapter is intended to create or imply a duty to make an adjustment, and a trustee is not liable for not considering whether to make an adjustment or for choosing not to make an adjustment.

§44B-1-105. Trustee's right to give notice.

(a) A trustee may but is not required to give a notice of proposed action regarding a matter governed by this chapter as provided in this section. For the purpose of this section, a proposed action includes a course of action and a decision not to take action.
(b) The trustee shall mail notice of the proposed action to all adult beneficiaries who are receiving, or are entitled to receive, income under the trust or to receive a distribution of principal if the trust were terminated at the time the notice is given.

(c) Notice of proposed action need not be given to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

(d) The notice of proposed action shall state that it is given pursuant to this section and shall state all of the following:

1. The name and mailing address of the trustee;
2. The name and telephone number of a person who may be contacted for additional information;
3. A description of the action proposed to be taken and an explanation of the reasons for the action;
4. The time within which objections to the proposed action can be made, which shall be at least thirty days from the mailing of the notice of proposed action;
5. The date on or after which the proposed action may be taken or is effective.

(e) A beneficiary may object to the proposed action by mailing a written objection to the trustee at the address stated in the notice of proposed action within the time period specified in the notice of proposed action.

(f) A trustee is not liable to a beneficiary for an action regarding a matter governed by this chapter if the trustee does not receive a written objection to the proposed action from the beneficiary within the applicable period and the other requirements of this section are satisfied. If no beneficiary entitled to notice objects under this section, the trustee is not liable to any
current or future beneficiary with respect to the proposed action.

(g) If the trustee receives a written objection within the applicable period, either the trustee or a beneficiary may petition the court to have the proposed action taken as proposed, taken with modifications, or denied. In the proceeding, a beneficiary objecting to the proposed action has the burden of proving that the trustee’s proposed action should not be taken. A beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding. If the trustee decides not to implement the proposed action, the trustee shall notify the beneficiaries of the decision not to take the action and the reasons for the decision, and the trustee’s decision not to implement the proposed action does not itself give rise to liability to any current or future beneficiary. A beneficiary may petition the court to have the action taken, and has the burden of proving that it should be taken.

(h) In a proceeding with respect to a trustee’s exercise or nonexercise of the power to make an adjustment under section one hundred four, the sole remedy is to direct, deny, or devise an adjustment between principal and income.

(i) Nothing in this section is intended to create or imply a duty to give notice and a trustee is not liable for choosing not to give notice or for not considering whether to give notice.

(j) This chapter applies to any will and trust established under an instrument executed on or after the effective date of this chapter except as otherwise expressly provided in the will or terms of the trust or in this chapter, or if the trustee or personal representative elects in either’s sole discretion to administer the trust or will under this chapter. With respect to any will or trust established under an instrument executed prior to the effective date of this chapter, this chapter applies if the
69 trustee or personal representative elects, in either's sold
70 discretion, to administer the trust or will under this chapter.

ARTICLE 2. DECEDENT'S ESTATE OR TERMINATING INCOME INTER-
EST.

§44B-2-201. Determination and distribution of net income.
§44B-2-202. Distribution to residuary and remainder beneficiaries.

§44B-2-201. Determination and distribution of net income.

1 After a decedent dies, in the case of an estate, or after an
2 income interest in a trust ends, the following rules apply:

3 (1) A fiduciary of an estate or of a terminating income
interest shall determine the amount of net income and net
principal receipts received from property specifically given to
a beneficiary under the rules in articles three through five which
apply to trustees and the rules in subdivision (5) of this section.
The fiduciary shall distribute the net income and net principal
receipts to the beneficiary who is to receive the specific
property.

4 (2) A fiduciary shall determine the remaining net income of
a decedent's estate or a terminating income interest under the
rules in articles three through five which apply to trustees and
by:

5 (A) Including in net income all income from property used
to discharge liabilities;

6 (B) Paying from income or principal, in the fiduciary's
discretion, fees of attorneys, accountants and fiduciaries; court
costs and other expenses of administration; and interest on
death taxes, but the fiduciary may pay those expenses from
income of property passing to a trust for which the fiduciary
claims an estate tax marital or charitable deduction only to the
extent that the payment of those expenses from income will not
cause the reduction or loss of the deduction; and
(C) Paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, family allowances and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust, or applicable law.

(3) A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright the interest or any other amount provided by the will, the terms of the trust or applicable law from net income determined under subdivision (2) of this section or from principal to the extent that net income is insufficient. If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends and no interest or other amount is provided for by the terms of the trust or applicable law, the fiduciary shall distribute the interest or other amount to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will.

(4) A fiduciary shall distribute the net income remaining after distributions required by subdivision (3) of this section in the manner described in section two hundred two of this article to all other beneficiaries, including a beneficiary who receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

(5) A fiduciary may not reduce principal or income receipts from property described in subdivision (1) of this section because of a payment described in section five hundred one or five hundred two, article five of this chapter to the extent that the will, the terms of the trust or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects
to recover the payment from a third party. The net income and
principal receipts from the property are determined by includ-
ing all of the amounts the fiduciary receives or pays with
respect to the property, whether those amounts accrued or
became due before, on or after the date of a decedent’s death or
an income interest’s terminating event, and by making a
reasonable provision for amounts that the fiduciary believes the
estate or terminating income interest may become obligated to
pay after the property is distributed.

§44B-2-202. Distribution to residuary and remainder benefici-a-
ries.

(a) Each beneficiary described in subdivision (4), section
two hundred one of this article is entitled to receive a portion of
the net income equal to the beneficiary’s fractional interest in
undistributed principal assets, using values as of the distribution
date. If a fiduciary makes more than one distribution of assets
to beneficiaries to whom this section applies, each beneficiary,
including one who does not receive part of the distribution, is
entitled, as of each distribution date, to the net income the
fiduciary has received after the date of death or terminating
event or earlier distribution date but has not distributed as of the
current distribution date.

(b) In determining a beneficiary’s share of net income, the
following rules apply:

(1) The beneficiary is entitled to receive a portion of the net
income equal to the beneficiary’s fractional interest in the
undistributed principal assets immediately before the distribu-
tion date, including assets that later may be sold to meet
principal obligations.

(2) The beneficiary’s fractional interest in the undistributed
principal assets must be calculated without regard to property
specifically given to a beneficiary and property required to pay
pecuniary amounts not in trust.
(3) The beneficiary’s fractional interest in the undistributed principal assets must be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation.

(4) The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

(c) If a fiduciary does not distribute all of the collected but undistributed net income to each person as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.

(d) A trustee may apply the rules in this section, to the extent that the trustee considers it appropriate, to net gain or loss realized after the date of death or terminating event or earlier distribution date from the disposition of a principal asset if this section applies to the income from the asset.

ARTICLE 3. APPORTIONMENT AT BEGINNING AND END OF INCOME INTEREST.

§44B-3-301. When right to income begins and ends.

§44B-3-302. Apportionment of receipts and disbursements when decedent dies or income interest begins.

§44B-3-303. Apportionment when income interest ends.

§44B-3-301. When right to income begins and ends.

(a) An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

(b) An asset becomes subject to a trust:

(1) On the date it is transferred to the trust in the case of an asset that is transferred to a trust during the transferor’s life;
(2) On the date of a testator’s death in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator’s estate; or

(3) On the date of an individual’s death in the case of an asset that is transferred to a fiduciary by a third party because of the individual’s death.

(c) An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under subsection (d) of this section, even if there is an intervening period of administration to wind up the preceding income interest.

(d) An income interest ends on the day before an income beneficiary dies or another terminating event occurs, or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

§44B-3-302. Apportionment of receipts and disbursements when decedent dies or income interest begins.

(a) A trustee shall allocate an income receipt or disbursement other than one to which subdivision (1), section two hundred one, article two of this chapter applies to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

(b) A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement must be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins must be allocated to principal and the balance must be allocated to income.
(c) An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of this chapter. Distributions to shareholders or other owners from an entity to which section four hundred one, article four of this chapter applies are deemed to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

§44B-3-303. Apportionment when income interest ends.

(a) In this section, "undistributed income" means net income received before the date on which an income interest ends. The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.

(b) When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust unless the beneficiary has an unqualified power to revoke more than five percent of the trust immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked must be added to principal.

(c) When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final payment if and to the extent required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate or other tax requirements.

ARTICLE 4. ALLOCATION OF RECEIPTS DURING ADMINISTRATION OF TRUST.
PART 1. RECEIPTS FROM ENTITIES.

§44B-4-401. Character or receipts.
§44B-4-402. Distribution from trust or estate.
§44B-4-403. Business and other activities conducted by trustee.
§44B-4-404. Principal receipts.
§44B-4-405. Rental property.
§44B-4-406. Obligation to pay money.
§44B-4-407. Insurance policies and similar contracts.
§44B-4-408. Insubstantial allocations not required.
§44B-4-409. Deferred compensation, annuities and similar payments.
§44B-4-410. Liquidating asset.
§44B-4-411. Minerals, water and other natural resources.
§44B-4-412. Timber.
§44B-4-413. Property not productive of income.
§44B-4-414. Derivatives and options.
§44B-4-415. Asset-backed securities.

§44B-4-401. Character or receipts.

(a) In this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund or any other organization in which a trustee has an interest other than a trust or estate to which section four hundred two of this article applies, a business or activity to which section four hundred three of this article applies, or an asset-backed security to which section four hundred fifteen of this article applies.

(b) Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.

(c) A trustee shall allocate the following receipts from an entity to principal:

(1) Property other than money;

(2) Money received in one distribution or a series of related distributions in exchange for part or all of a trust’s interest in the entity;
(3) Money received in total or partial liquidation of the entity; and

(4) Money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

(d) Money is received in partial liquidation:

(1) To the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or

(2) If the total amount of money and property received in a distribution or series of related distributions is greater than twenty percent of the entity’s gross assets, as shown by the entity’s year-end financial statements immediately preceding the initial receipt.

(e) Money is not received in partial liquidation, nor may it be taken into account under subdivision (2), subsection (d) of this section, to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the money.

(f) A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity’s board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation’s board of directors.

§44B-4-402. Distribution from trust or estate.

A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest, and shall allocate to principal an amount received as a distribution of
principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, section four hundred one or four hundred fifteen of this article applies to a receipt from the trust.

§44B-4-403. Business and other activities conducted by trustee.

(a) If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

(b) A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts must be retained for working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.

(c) Activities for which a trustee may maintain separate accounting records include:

(1) Retail, manufacturing, service and other traditional business activities;

(2) Farming;

(3) Raising and selling livestock and other animals;
27 (4) Management of rental properties;

28 (5) Extraction of minerals and other natural resources;

29 (6) Timber operations; and

30 (7) Activities to which section 414 applies.

PART 2. RECEIPTS NOT NORMALLY APPORTIONED.

§44B-4-404. Principal receipts.

1 A trustee shall allocate to principal:

2 (1) To the extent not allocated to income under this chapter, assets received from a transferor during the transferor’s lifetime, a decedent’s estate, a trust with a terminating income interest or a payer under a contract naming the trust or its trustee as beneficiary;

3 (2) Money or other property received from the sale, exchange, liquidation or change in form of a principal asset, including realized profit, subject to this article;

4 (3) Amounts recovered from third parties to reimburse the trust because of disbursements described in subdivision (7), subsection (a), section five hundred two, article five of this chapter or for other reasons to the extent not based on the loss of income;

5 (4) Proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income;

6 (5) Net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income; and

7 (6) Other receipts as provided in part 3 of this article.
§44B-4-405. Rental property.
1 To the extent that a trustee accounts for receipts from rental
2 property pursuant to this section, the trustee shall allocate to
3 income an amount received as rent of real or personal property,
4 including an amount received for cancellation or renewal of a
5 lease. An amount received as a refundable deposit, including a
6 security deposit or a deposit that is to be applied as rent for
7 future periods, must be added to principal and held subject to
8 the terms of the lease and is not available for distribution to a
9 beneficiary until the trustee’s contractual obligations have been
10 satisfied with respect to that amount.

§44B-4-406. Obligation to pay money.
1 (a) An amount received as interest, whether determined at
2 a fixed, variable or floating rate, on an obligation to pay money
3 to the trustee, including an amount received as consideration for
4 prepaying principal, must be allocated to income without any
5 provision for amortization of premium.

6 (b) A trustee shall allocate to principal an amount received
7 from the sale, redemption or other disposition of an obligation
8 to pay money to the trustee more than one year after it is
9 purchased or acquired by the trustee, including an obligation
10 whose purchase price or value when it is acquired is less than
11 its value at maturity. If the obligation matures within one year
12 after it is purchased or acquired by the trustee, an amount
13 received in excess of its purchase price or its value when
14 acquired by the trust must be allocated to income.

15 (c) This section does not apply to an obligation to which
16 section four hundred nine, four hundred ten, four hundred
17 eleven, four hundred twelve, four hundred fourteen or four
18 hundred fifteen of this article applies.

§44B-4-407. Insurance policies and similar contracts.
1 (a) Except as otherwise provided in subsection (b), a trustee
2 shall allocate to principal the proceeds of a life insurance policy
or other contract in which the trust or its trustee is named as
beneficiary, including a contract that insures the trust or its
trustee against loss for damage to, destruction of or loss of title
to a trust asset. The trustee shall allocate dividends on an
insurance policy to income if the premiums on the policy are
paid from income, and to principal if the premiums are paid
from principal.

(b) A trustee shall allocate to income proceeds of a contract
that insures the trustee against loss of occupancy or other use by
an income beneficiary, loss of income or, subject to section four
hundred three of this article, loss of profits from a business.

(c) This section does not apply to a contract to which
section four hundred nine of this article applies.

PART 3. RECEIPTS NORMALLY APPORTIONED.

§44B-4-408. Insubstantial allocations not required.

(a) If a trustee determines that an allocation between
principal and income required by section four hundred nine,
four hundred ten, four hundred eleven, four hundred twelve or
four hundred fifteen, of this article is insubstantial, the trustee
may allocate the entire amount to principal unless one of the
circumstances described in subsection (c), section one hundred
four of this article applies to the allocation. This power may be
exercised by a cotrustee in the circumstances described in
subsection (d) of said section and may be released for the
reasons and in the manner described in subdivision (e) of said
section. An allocation is presumed to be insubstantial if:

(1) The amount of the allocation would increase or decrease
net income in an accounting period, as determined before the
allocation, by less than ten percent; or

(2) The value of the asset producing the receipt for which
the allocation would be made is less than ten percent of the total
value of the trust’s assets at the beginning of the accounting period.

(b) Nothing in this section imposes a duty on the trustee to make an allocation under this section, and the trustee is not liable for failure to make an allocation under this section.

§44B-4-409. Deferred compensation, annuities and similar payments.

(a) In this section, “payment” means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer’s general assets or from a separate fund created by the payer, including a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus or stock-ownership plan.

(b) To the extent that a payment is characterized as interest or a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate it to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend or an equivalent payment.

(c) If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income ten percent of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not “required to be made” to the extent that it is made because the trustee exercises a right of withdrawal.
(d) If, to obtain an estate tax marital deduction for a trust, a trustee must allocate more of a payment to income than provided for by this section, the trustee shall allocate to income the additional amount necessary to obtain the marital deduction.

(e) This section does not apply to payments to which section four hundred ten of this article applies.

§44B-4-410. Liquidating asset.

(a) In this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right and right to receive payments during a period of more than one year under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include a payment subject to section four hundred nine of this article, resources subject to section four hundred eleven of this article, timber subject to section four hundred twelve of this article, an activity subject to section four hundred fourteen of this article, an asset subject to section four hundred fifteen of this article or any asset for which the trustee establishes a reserve for depreciation under section five hundred three, article five of this chapter.

(b) A trustee shall allocate to income ten percent of the receipts from a liquidating asset and the balance to principal.

§44B-4-411. Minerals, water and other natural resources.

(a) To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:

(1) If received as nominal delay rental or nominal annual rent on a lease, a receipt must be allocated to income;
(2) If received from a production payment, a receipt must be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal;

(3) If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus or delay rental is more than nominal, ninety percent must be allocated to principal and the balance to income;

(4) If an amount is received from a working interest or any other interest not provided for in subdivision (1), (2) or (3) of this subsection, ninety percent of the net amount received must be allocated to principal and the balance to income.

(b) An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, ninety percent of the amount must be allocated to principal and the balance to income.

(c) This chapter applies whether or not a decedent or donor was extracting minerals, water or other natural resources before the interest became subject to the trust.

(d) If a trust owns an interest in minerals, water or other natural resources on the effective date of this chapter, the trustee may allocate receipts from the interest as provided in this chapter or in the manner used by the trustee before the effective date of this chapter. If the trust acquires an interest in minerals, water or other natural resources after the effective date of this chapter, the trustee shall allocate receipts from the interest as provided in this chapter.

§44B-4-412. Timber.

(a) To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts:
(1) To income to the extent that the amount of timber removed from the land does not exceed the rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest;

(2) To principal to the extent that the amount of timber removed from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;

(3) To or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the rules in subdivisions (1) and (2) of this subsection; or

(4) To principal to the extent that advance payments, bonuses and other payments are not allocated pursuant to subdivision (1), (2) or (3) of this subsection.

(b) In determining net receipts to be allocated pursuant to subsection (a) of this section, a trustee shall deduct and transfer to principal a reasonable amount for depletion.

(c) This chapter applies whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

(d) If a trust owns an interest in timberland on the effective date of this chapter, the trustee may allocate net receipts from the sale of timber and related products as provided in this chapter or in the manner used by the trustee before the effective date of this chapter. If the trust acquires an interest in timberland after the effective date of this chapter, the trustee shall allocate net receipts from the sale of timber and related products as provided in this chapter.
§44B-4-413. Property not productive of income.

(a) If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the surviving spouse with sufficient income from or use of the trust assets, and if the amounts that the trustee transfers from principal to income under section one hundred four of this article and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of income, convert property within a reasonable time, or exercise the power conferred by subsection (a) of said section. The trustee may decide which action or combination of actions to take.

(b) In cases not governed by subsection (a) of this section, proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting period.

§44B-4-414. Derivatives and options.

(a) In this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments which gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates or other market indicator for an asset or a group of assets.

(b) To the extent that a trustee accounts for transactions in derivatives pursuant to this section, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

(c) If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the
option is granted, grants an option that permits another person
to sell property to the trust or acquires an option to buy property
for the trust or an option to sell an asset owned by the trust, and
the trustee or other owner of the asset is required to deliver the
asset if the option is exercised, an amount received for granting
the option must be allocated to principal. An amount paid to
acquire the option must be paid from principal. A gain or loss
realized upon the exercise of an option, including an option
granted to a settlor of the trust for services rendered, must be
allocated to principal.

§44B-4-415. Asset-backed securities.

(a) In this section, "asset-backed security" means an asset
whose value is based upon the right it gives the owner to
receive distributions from the proceeds of financial assets that
provide collateral for the security. The term includes an asset
that gives the owner the right to receive from the collateral
financial assets only the interest or other current return or only
the proceeds other than interest or current return. The term does
not include an asset to which section four hundred one or four
hundred nine of this article applies.

(b) If a trust receives a payment from interest or other
current return and from other proceeds of the collateral finan-
cial assets, the trustee shall allocate to income the portion of the
payment which the payer identifies as being from interest or
other current return and shall allocate the balance of the
payment to principal.

(c) If a trust receives one or more payments in exchange for
the trust’s entire interest in an asset-backed security in one
accounting period, the trustee shall allocate the payments to
principal. If a payment is one of a series of payments that will
result in the liquidation of the trust’s interest in the security
over more than one accounting period, the trustee shall allocate ten percent of the payment to income and the balance to principal.

ARTICLE 5. ALLOCATION OF DISBURSEMENTS DURING ADMINISTRATION OF TRUST.

§44B-5-501. Disbursements from income.

§44B-5-502. Disbursements from principal.

§44B-5-503. Transfers from income to principal for depreciation.

§44B-5-504. Transfers from income to reimburse principal.

§44B-5-505. Income taxes.

§44B-5-506. Adjustments between principal and income because of taxes.

§44B-5-507. Effect on marital deduction.

§44B-5-501. Disbursements from income.

A trustee shall make the following disbursements from income to the extent that they are not disbursements to which paragraph (B) or (C), subdivision (2), section two hundred one, article two of this chapter applies:

(1) Except as otherwise ordered by the court one half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee;

(2) Except as otherwise ordered by the court one half of all expenses for accountings, judicial proceedings or other matters that involve both the income and remainder interests;

(3) All of the other ordinary expenses incurred in connection with the administration, management or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal and expenses of a proceeding or other matter that concerns primarily the income interest; and

(4) Recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

§44B-5-502. Disbursements from principal.
(a) A trustee shall make the following disbursements from principal:

(1) Except as otherwise ordered by the court the remaining one half of the disbursements described in subdivisions (1) and (2), section five hundred one of this article;

(2) Except as otherwise ordered by the court all of the trustee's compensation calculated on principal as a fee for acceptance, distribution or termination, and disbursements made to prepare property for sale;

(3) Payments on the principal of a trust debt;

(4) Expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;

(5) Premiums paid on a policy of insurance not described in subdivision (4), section five hundred one of this article of which the trust is the owner and beneficiary;

(6) Estate, inheritance and other transfer taxes, including penalties, apportioned to the trust; and

(7) Disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties and defending claims based on environmental matters.

(b) If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an
amount equal to the income paid to the creditor in reduction of
the principal balance of the obligation.

§44B-5-503. Transfers from income to principal for depreciation.

(a) In this section, "depreciation" means a reduction in
value due to wear, tear, decay, corrosion or gradual obsoles-
ce of a fixed asset having a useful life of more than one
year.

(b) A trustee may transfer to principal a reasonable amount
of the net cash receipts from a principal asset that is subject to
depreciation, under generally accepted accounting principles,
but may not transfer any amount for depreciation:

(1) Of that portion of real property used or available for use
by a beneficiary as a residence or of tangible personal property
held or made available for the personal use or enjoyment of a
beneficiary;

(2) During the administration of a decedent's estate; or

(3) Under this section if the trustee is accounting under
section four hundred three, article four of this chapter for the
business or activity in which the asset is used.

(c) An amount transferred to principal need not be held as
a separate fund.

§44B-5-504. Transfers from income to reimburse principal.

(a) If a trustee makes or expects to make a principal
disbursement described in this section, the trustee may transfer
an appropriate amount from income to principal in one or more
accounting periods to reimburse principal or to provide a
reserve for future principal disbursements.

(b) Principal disbursements to which subsection (a) of this
section applies include the following, but only to the extent that
the trustee has not been and does not expect to be reimbursed by a third party:

(1) An amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs;

(2) A capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments;

(3) Disbursements made to prepare property for rental, including tenant allowances, leasehold improvements and broker’s commissions;

(4) Periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments; and

(5) Disbursements described in subdivision (7), subsection (a), section five hundred two of this article.

(c) If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in subsection (a) of this section.

§44B-5-505. Income taxes.

(a) A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

(b) A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

(c) A tax required to be paid by a trustee on the trust’s share of an entity’s taxable income must be paid proportionately:
(1) From income to the extent that receipts from the entity are allocated to income; and

(2) From principal to the extent that:

(A) Receipts from the entity are allocated to principal; and

(B) The trust's share of the entity's taxable income exceeds the total receipts described in subdivision (1) and paragraph (A), subdivision (2) of this subsection.

(d) For purposes of this section, receipts allocated to principal or income must be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.

§44B-5-506. Adjustments between principal and income because of taxes.

(a) A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries which arise from:

(1) Elections and decisions, other than those described in subsection (b) of this section, that the fiduciary makes from time to time regarding tax matters;

(2) An income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust; or

(3) The ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust or a beneficiary.

(b) If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes
instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, trust or beneficiary are decreased, each estate, trust or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement must equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust or beneficiary whose income taxes are reduced must be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.

§44B-5-507. Effect on marital deduction.

If a marital deduction gift is made in trust, in addition to the other provisions of this chapter, each of the following provisions also applies to the marital deduction trust:

(a) The transferor’s spouse is the only beneficiary of income or principal of the marital deduction property as long as the spouse is alive. Nothing in this subdivision precludes exercise by the transferor’s spouse of a power of appointment included in a trust that qualifies as a general power of appointment marital deduction trust.

(b) Subject to the provisions of subdivision (d) of this section, the transferor’s spouse is entitled to all of the income of the marital deduction property as long as the spouse is alive. Nothing in this subdivision precludes exercise by the transferor’s spouse of a power of appointment included in a trust that qualifies as a general power of appointment marital deduction trust.

(c) The transferor’s spouse has the right to require that the trustee of the trust make unproductive marital deduction
19 property productive or to convert it into productive property
20 within a reasonable time.

21 (d) Notwithstanding the provisions of section three hundred
22 three, article three of this chapter, in the case of a qualified
23 terminable interest property under 26 U.S.C. §2056 (b)(7) or 26
24 U.S.C. §2523 (f), as the same are in effect on the effective date
25 of this chapter, on termination of the interest of the transferor’s
26 spouse in the trust all of the remaining accrued or undistributed
27 income shall pass to the estate of the transferor’s spouse, unless
28 the instrument provides a different disposition that qualifies for
29 the marital deduction.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§44B-6-601. Uniformity of application and construction.
1 In applying and construing this chapter, consideration must
2 be given to the need to promote uniformity of the law with
3 respect to its subject matter among states that enact it.

§44B-6-602. Severability clause.
1 If any provision of this chapter or its application to any
2 person or circumstance is held invalid, the invalidity does not
3 affect other provisions or applications of this chapter which can
4 be given effect without the invalid provision or application, and
5 to this end the provisions of this chapter are severable.

§44B-6-603. Effective date.
1 This chapter takes effect on the first day of July, two
2 thousand.

§44B-6-604. Application of chapter to existing trusts and estates.
1 This chapter applies, to any will and trust established under
2 an instrument executed on or after the effective date of this
chapter except as otherwise expressly provided in the will or
terms of the trust or in this chapter, or if the trustee or personal
representative elects in either’s sole discretion to administer the
trust or will under this chapter.

With respect to any will or trust established under an
instrument executed prior to the effective date of this chapter,
this chapter applies if the trustee or personal representative
elects, in either’s sole discretion, to administer the trust or will
under this chapter.

CHAPTER 274

(Com. Sub. for H. B. 4442 — By Delegates Linch, Pino,
Varner, Leach, Staton, Douglas and Laird)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]
That section one, article twenty-two, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section eleven, article three, chapter five-a of said code be amended and reenacted; that article three of said chapter be further amended by adding six new sections, designated sections thirty-three-a, thirty-three-b, thirty-three-c, thirty-three-d, thirty-three-e, and thirty-three-f; that section eleven, article one, chapter seven of said code be amended and reenacted; that section nineteen, article four, chapter seventeen of said code be amended and reenacted; that section fifteen, article nine-d, chapter eighteen of said code be amended and reenacted; and that section five, article five, chapter eighteen-b 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.

5A. Department of Administration.
7. County Commissions and Officers.
17. Roads and Highways.
18. Education.
18B. Higher Education.

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 22. GOVERNMENT CONSTRUCTION CONTRACTS.

§5-22-1. Bidding required; government construction contracts to go to qualified responsible bidder; debarment; exceptions.

(a) As used in this section, "the state and its subdivisions" means the state of West Virginia, every political subdivision thereof, every administrative entity that includes such a
subdivision, all municipalities and all county boards of education.

(b) The state and its subdivisions shall, except as provided in this section, solicit competitive bids for every construction project exceeding twenty-five thousand dollars in total cost: Provided, That a vendor who has been debarred pursuant to the provisions of sections thirty-three-a through thirty-three-f, article three, chapter five-a of this code, may not bid on or be awarded a contract under this section.

(c) Following the solicitation of such bids, the construction contract shall be awarded to the lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond: Provided, That the state and its subdivisions may reject all bids and solicit new bids on said project.

(d) Nothing in this section shall apply to:

(1) Work performed on construction or repair projects by regular full-time employees of the state or its subdivisions;

(2) Prevent students enrolled in vocational educational schools from being utilized in construction or repair projects when such use is a part of the students training program;

(3) Emergency repairs to building components and systems. For the purpose of this subdivision, emergency repairs means repairs that if not made immediately will seriously impair the use of such building components and systems, or cause danger to those persons using such building components and systems; and

(4) Any situation where the state or a subdivision thereof shall come to an agreement with volunteers, or a volunteer group, whereby the governmental body will provide construction or repair materials, architectural, engineering, technical or any other professional services and the volunteers will provide
the necessary labor without charge to, or liability upon, the governmental body.

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 3. PURCHASING DIVISION.

§5A-3-11. Purchasing in open market on competitive bids; debarment; bids to be based on standard specifications; period for alteration or withdrawal of bids; awards to lowest responsible bidder; uniform bids; record of bids; and exception.

§5A-3-33a. Definitions.

§5A-3-33b. Scope.

§5A-3-33c. Duties.

§5A-3-33d. Grounds for debarment.

§5A-3-33e. Debarment procedure.

§5A-3-33f. Effects of debarment.

§5A-3-11. Purchasing in open market on competitive bids; debarment; bids to be based on standard specifications; period for alteration or withdrawal of bids; awards to lowest responsible bidder; uniform bids; record of bids; and exception.

(a) The director may make a purchase of commodities, printing, and services of ten thousand dollars or less in amount in the open market, but the purchase shall, wherever possible, be based on at least three competitive bids.

(b) The director may authorize spending units to purchase commodities, printing and services in the amount of one thousand dollars in the open market without competitive bids.

(c) Bids shall be based on the standard specifications promulgated and adopted in accordance with the provisions of section five of this article, and may not be altered or withdrawn after the appointed hour for the opening of the bids.

(d) A vendor who has been debarred pursuant to the provisions of sections thirty-three-a through thirty-three-f,
article three, chapter five-a of this code, may not bid on or be awarded a contract under this section.

(e) All open market orders, purchases based on advertised bid requests or contracts made by the director or by a state department shall be awarded to the lowest responsible bidder, taking into consideration the qualities of the articles to be supplied, their conformity with specifications, their suitability to the requirements of the government and the delivery terms: Provided, That state bids on school buses shall be accepted from all bidders who shall then be awarded contracts if they meet the state board’s “Minimum Standards for Design and Equipment of School Buses”. County boards of education may select from those bidders who have been awarded contracts and shall pay the difference between the state aid formula amount and the actual cost of bus replacement. Any or all bids may be rejected.

(f) If all bids received on a pending contract are for the same unit price or total amount, the director has the authority to reject all bids, and to purchase the required commodities, printing and services in the open market, if the price paid in the open market does not exceed the bid prices.

(g) All bidders submitting bid proposals to the purchasing division are required to submit an extra or duplicate copy to the state auditor.

(h) Both copies must be received at the respective offices prior to the specified date and time of the bid openings. The failure to deliver or the nonreceipt of these bid forms at either of these offices prior to the appointed date and hour are grounds for rejection of the bids. In the event of any deviation between the copies submitted to the purchasing division and the state auditor, the bids as to which there is a deviation shall be rejected, if the deviation relates to the quantity, quality or specifications of the commodities, printing or services to be
furnished or to the price therefor or to the date of delivery or performance.

(i) After the award of the order or contract, the director, or someone appointed by him or her for that purpose, shall indicate upon the successful bid and its copy in the office of the state auditor that it was the successful bid. Thereafter, the copy of each bid in the possession of the director and the state auditor shall be maintained as a public record by both of them, shall be open to public inspection in the offices of both the director and the state auditor and may not be destroyed by either of them without the written consent of the legislative auditor: Provided, That the governing board as defined in section two, article one, chapter eighteen-b of this code, may certify in writing to the director the need for a specific item essential to a particular usage either for instructional or research purposes at an institution of higher education and the director upon review of such certification may provide for the purchase of said specific items in the open market without competitive bids.

(j) If the director permits bids by facsimile transmission machine to be accepted in lieu of sealed bids pursuant to the provisions of section ten of this article, a duplicate facsimile transmission machine bid shall be transmitted to the state auditor pursuant to this section: Provided, That an original bid is received by the state auditor within two working days following the date specified for bid opening.

§5A-3-33a. Definitions.

For purposes of the provisions of sections thirty-three-a through thirty-three-f of this article:

(a) "Debarment" means the exclusion of a vendor from the right to bid on contracts to sell goods or supply services to the state or its subdivisions for a specified period of time.
6 (b) "The state and its subdivisions" means the state of West Virginia, every political subdivision thereof, every administrative entity that includes such a subdivision, all municipalities and all county boards of education.

(c) "Vendor" means any person or entity that is eligible to bid on contracts to supply the state or its subdivisions with commodities or services, including contracting services for the construction and improvement of roads and buildings.

§5A-3-33b. Scope.

The provisions of sections thirty-three-a through thirty-three-f of this article govern the debarment of vendors with regard to bids under the following provisions of this code:

(a) Section one, article twenty-two, chapter five, relating to bids for construction contracts by the state and its subdivisions;

(b) Section eleven, article three, chapter five-a, relating to the purchase of supplies and printing by the state;

(c) Section eleven, article one, chapter seven, relating to bids for the purchase of commodities and printing by county commissions;

(d) Sections nineteen and twenty, article four, chapter seventeen, relating to bids for construction and reconstruction of state roads and bridges and the furnishing of materials and supplies therefor;

(e) Article nine-d, chapter eighteen, relating to the awarding of contracts by the school building authority; and

(f) Sections four and five, article five, chapter eighteen-b, relating to expenditures by the governing boards for higher education.

§5A-3-33c. Duties.
The director has primary responsibility for administering the debarment process. The director's duties include:

(a) Obtaining lists of vendors declared ineligible under federal laws and regulations;
(b) Notification of all contracting officials for the state and its subdivisions regarding debarred vendors;
(c) Compiling and maintaining a current, consolidated list of all vendors that have been debarred or declared ineligible, the period of such debarment, and the reasons therefor;
(d) Investigating complaints about vendors from the officials of the state and its subdivisions responsible for contracting with vendors for supplies and services;
(e) Initiating and conducting debarment procedures;
(f) Proposing rules for legislative approval, pursuant to the provisions of article three, chapter twenty-nine-a of this code, for the operation of the debarment process described in the provisions of sections thirty-three-a through thirty-three-f of this article.

§5A-3-33d. Grounds for debarment.

Grounds for debarment are:

(a) Conviction of an offense involving fraud or a felony offense in connection with obtaining or attempting to obtain a public contract or subcontract.
(b) Conviction of any federal or state antitrust statute relating to the submission of offers.
(c) Conviction of an offense involving embezzlement, theft, forgery, bribery, falsification or destruction of records, making
false statements or receiving stolen property in connection with the performance of a contract.

(d) Conviction of a felony offense demonstrating a lack of business integrity or business honesty that affects the present responsibility of the vendor or subcontractor.

(e) Default on obligations owed to the state, including, but not limited to, obligations under the West Virginia workers' compensation act, the West Virginia unemployment compensation act, and West Virginia state tax and revenue laws. For purposes of this subsection, a vendor is in default when, after due notice, the vendor fails to submit a required payment, interest thereon, or penalty, and has not entered into a repayment agreement with the appropriate agency of the state, or has entered into a repayment agreement but does not remain in compliance with its obligations under the repayment agreement. In the case of a vendor granted protection by order of a federal bankruptcy court or a vendor granted an exemption under any rule of the bureau of employment programs, the director may waive debarment under section thirty-three-f of this article: Provided, That in no event may debarment be waived with respect to any vendor who has not paid all current state obligations for at least the four most recent calendar quarters, excluding the current calendar quarter, or with respect to any vendor who is in default on a repayment agreement with an agency of the state.

(f) The vendor is not in good standing with a licensing board, in that the vendor is not licensed when licensure is required by the law of this state, or the vendor has been found to be in violation of an applicable licensing law after notice, opportunity to be heard and other due process required by law.

(g) Violation of the terms of a public contract or subcontract for:
(1) Willful failure to substantially perform in accordance with the terms of one or more public contracts;

(2) Performance in violation of standards established by law or generally accepted standards of the trade or profession amounting to intentionally deficient or grossly negligent performance on one or more public contracts;

(3) Use of substandard materials on one or more public contracts, or defects in construction in one or more public construction projects amounting to intentionally deficient or grossly negligent performance, even if discovery of the defect is subsequent to acceptance of a construction project and expiration of any warranty thereunder;

(4) A repeated pattern or practice of failure to perform so serious and compelling as to justify debarment; or

(5) Any other cause of a serious and compelling nature amounting to knowing and willful misconduct of the vendor that demonstrates a wanton indifference to the interests of the public and that caused, or that had a substantial likelihood of causing, serious harm to the public.

§5A-3-33e. Debarment procedure.

(a) The director shall obtain lists of vendors declared ineligible under federal laws and regulation and lists of vendors who are in default on state obligations, and shall initiate debarment proceedings with respect to such vendors, except when good cause is shown which includes evidence that the vendor has become responsible.

(1) In the case of federal ineligibility restrictions applicable to state agencies, the director shall also notify the appropriate agencies of any ineligibility determined under federal authority.
(2) The director may also initiate debarment proceedings if he or she finds probable cause for debarment for any ground set forth in section thirty-three-d of this article.

(3) The director shall initiate debarment proceedings when any state agency requests debarment of a vendor and the director finds that probable cause for debarment exists.

(b) The director shall notify the vendor by certified mail, return receipt requested, of the following:

(1) The reasons for the proposed debarment in sufficient detail to put the vendor on notice of the conduct or transactions upon which the proposed debarment is based;

(2) The causes relied upon for the proposed debarment;

(3) That within thirty working days after receipt of the notice, the vendor may submit in writing information and argument in opposition to the proposed debarment;

(4) The procedures governing debarment decision-making; and

(5) The potential effect of the proposed debarment.

(c) In the event a vendor wishes to contest the debarment decision, the director shall decide the matter in accordance with the provisions of article five, chapter twenty-nine-a of this code.

(d) In any debarment decision, the director shall make a specific finding, based on the substantial record, whether the public interest requires that the debarment decision extend to all commodities and services of the vendor, or whether the public interest allows the debarment decision to be limited to specific commodities or services.

(e) In any debarment decision, the director shall specify the length of the debarment period. The debarment period must be
39 for the period of time that the director finds necessary and
40 proper to protect the public from an irresponsible vendor.

41 (f) Proof of grounds for debarment must be clear and
42 convincing.

§5A-3-33f. Effects of debarment.

1 (a) Unless the director determines in writing that there is a
2 compelling reason to do otherwise, the state and its subdivisions
3 may not solicit offers from, award contracts to, or consent to
4 subcontract with a debarred vendor during the debarment
5 period.

6 (b) The contracting officer may not exercise an option to
7 renew or otherwise extend a current contract with a debarred
8 vendor, or a contract which is being performed in any part by
9 a debarred subcontractor, unless the director approves the
10 action in writing, based on compelling reasons for exercise of
11 the option or extension.

12 (c) The debarment decision may extend to all commodities
13 and services of the vendor, or may be limited to specific
14 commodities or services, as the director specifically finds, in
15 the debarment procedure under section thirty-three-e of this
16 article, to be in the public interest based on the substantial
17 record.

18 (d) The director may extend the debarment to include an
19 affiliate of the vendor upon proof necessary to pierce the
20 corporate veil at common law. The director shall follow the
21 same procedure, and afford the affiliate like notice, hearing and
22 other rights, for extending the debarment to the affiliate as
23 provided for under section thirty-three-e for the debarment of
24 the vendor.
25 (e) The director may reduce the period or extent of debar-
26 ment, upon the vendor's request supported by documentation,
27 for the following reasons:

28 (1) Newly discovered material evidence;

29 (2) Reversal of the conviction or judgment upon which
debarment was based;

30 (3) Elimination of the causes for which the debarment was
imposed; or

31 (4) Other good cause shown, including evidence that the
vendor has become responsible.

35 (f) The director may extend the debarment period for an
additional period if the director determines that the extension is
necessary to protect the interests of the state. Upon the expira-
tion of a debarment period, the director shall extend the
debarment period for any vendor who has not paid all current
state obligations for at least the four most recent calendar
quarters, exempting the current calendar quarter, and for any
vendor who is in default on a repayment agreement with an
agency of the state, until such time as the cause for the extended
debarment is removed. If the director extends the debarment
period, the director shall follow the same procedures, and afford
the vendor like notice, hearing and other rights for extending
the debarment, as provided for debarment under section thirty-
three-e of this article.

49 (g) A debarment under this article may be waived by the
director with respect to a particular contract if the director
determines the debarment of the vendor would severely disrupt
the operation of a governmental entity to the detriment of the
general public or would not be in the public interest.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.
ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-11. Purchasing in open market or competitive bids; debarment.

(a) County commissions may make a purchase of commodities and printing of fifteen thousand dollars or less in amount in the open market, but a purchase of and contract for commodities and printing over fifteen thousand dollars shall be based on competitive bids, except in case of emergency.

(b) The county commission of any county is authorized and empowered to promulgate rules governing the procedure of competitive bids: Provided, That a vendor who has been debarred pursuant to the provisions of sections thirty-three-a through thirty-three-f, article three, chapter five-a of this code, may not bid on or be awarded a contract under this section.

(c) As used in this section, the terms "commodities" and "printing" shall have the same meaning as those terms are defined in section one, article one, chapter five-a of this code.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 4. STATE ROAD SYSTEM.

§17-4-19. Contracts for construction, materials, etc.; work by prison labor, etc.; bidding procedure.

(a) All work of construction and reconstruction of state roads and bridges, and the furnishing of all materials and supplies therefor, and for the repair thereof shall be done and furnished pursuant to contract, except that the commissioner may not be required to award any contract for work which can be done advantageously, economically and practicably by commission forces or prison labor and by use of state road equipment, or for materials and supplies, which are manufactured, processed or assembled by the commissioner: Provided, That the commissioner may not be required to award any
contract for work, materials or supplies for an amount less than
three thousand dollars. In all the work, the commissioner shall
utilize state road forces or prison labor and state road equip-
ment and shall manufacture, process and assemble all the
materials and supplies for the work whenever and wherever the
commissioner, in his or her discretion, finds work and services
advantageous, economical and practicable in the state road
program.

(b) If the work is to be done, or the materials therefor are
to be furnished by contract, the commissioner shall thereupon
publish the following described advertisement as a Class II
legal advertisement, in compliance with the provisions of article
three, chapter fifty-nine of this code, and the publication area
for the publication shall be the county or municipality in which
the road lies.

(c) The advertisement shall also be published at least once
in at least one daily newspaper published in the city of
Charleston and in other journals or magazines as may to the
commissioner seem advisable. The advertisement shall solicit
sealed proposals for the construction or other improvement of
the road, and for the furnishing of materials therefor, accurately
describing the same, and stating the time and place for opening
the proposals and reserving the right to reject any and all
proposals: Provided, That whenever the estimated amount of
any contract for work or for materials or supplies is less than
three thousand dollars, the commissioner may not be required
to advertise the letting of the contract in newspapers as above
required, but may award the contract to the lowest responsible
bidder, when two or more sealed proposals or bids have been
received by him or her without the advertisement, but the
contract may not be so awarded unless the bid of the successful
bidder is three thousand dollars or less.
(d) The commissioner shall have the power to prescribe proper prequalifications of contractors bidding on state road construction work: Provided, That a vendor who has been debarred pursuant to the provisions of sections thirty-three-a through thirty-three-f, article three, chapter five-a of this code, may not bid on or be awarded a contract under this section.

(e) To all sealed proposals there shall be attached the certified check of the bidder or bidder’s bond acceptable to the commissioner, in the amount as the commissioner shall specify in the advertisement, but not to exceed five percent of the aggregate amount of the bid; but the amount shall never be less than five hundred dollars. The proposals shall be publicly opened and read at the time and place specified in the advertisement, and the contract for the work, or for the supplies or materials required therefor shall, if let, be awarded by the commissioner to the lowest responsible bidder for the type of construction selected.

(f) In case all bids be rejected, the commissioner may thereafter do the work with commission forces or with prison labor, or may readvertise in the same manner as before and let a contract for the work pursuant thereto.

CHAPTER 18. EDUCATION.

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-15. Legislative intent; distribution of money.

(a) It is the intent of the Legislature to empower the school building authority to facilitate and provide state funds and to administer all federal funds provided for the construction and major improvement of school facilities so as to meet the educational needs of the people of this state in an efficient and economical manner. The authority shall make funding determinations in accordance with the provisions of this article and shall assess existing school facilities and each facility’s school
major improvement plan in relation to the needs of the individual student, the general school population, the communities served by the facilities and facility needs statewide.

(b) An amount that is no more than three percent of the sum of moneys that are determined by the authority to be available for distribution during the then current fiscal year from: (1) Moneys paid into the school building capital improvements fund pursuant to section ten, article nine-a of this chapter; (2) the issuance of revenue bonds for which moneys in the school building debt service fund are pledged as security; (3) moneys paid into the school construction fund pursuant to section six of this article; and (4) any other moneys received by the authority, except moneys paid into the school major improvement fund pursuant to section six of this article, may be allocated and may be expended by the authority for projects that service the educational community statewide or, upon application by the state board, for educational programs that are under the jurisdiction of the state board. In addition, upon application by the state board or the administrative council of an area vocational educational center established pursuant to article two-b of this chapter, the authority may allocate and expend under this section moneys for school major improvement projects proposed by the state board or an administrative council for school facilities under the direct supervision of the state board or an administrative council, respectively: Provided, That the authority may not expend any moneys for a school major improvement project proposed by the state board or the administrative council of an area vocational educational center unless the state board or an administrative council has submitted a ten-year school major improvement plan, to be updated annually, pursuant to section sixteen of this article: Provided, however, That the authority shall, before allocating any moneys to the state board or the administrative council of an area vocational educational center for a school improvement project, consider all other funding sources available for the project.
(c) An amount that is no more than two percent of the moneys that are determined by the authority to be available for distribution during the current fiscal year from: (1) Moneys paid into the school building capital improvements fund pursuant to section ten, article nine-a of this chapter; (2) the issuance of revenue bonds for which moneys in the school building debt service fund are pledged as security; (3) moneys paid into the school construction fund pursuant to section six of this article; and (4) any other moneys received by the authority, except moneys deposited into the school major improvement fund, shall be set aside by the authority as an emergency fund to be distributed in accordance with the guidelines adopted by the authority.

(d) The remaining moneys determined by the authority to be available for distribution during the then current fiscal year from: (1) Moneys paid into the school building capital improvements fund pursuant to section ten, article nine-a of this chapter; (2) the issuance of revenue bonds for which moneys in the school building debt service fund are pledged as security; (3) moneys paid into the school construction fund pursuant to section six of this article; and (4) any other moneys received by the authority, except moneys deposited into the school major improvement fund, shall be allocated and expended on the basis of need and efficient use of resources, the basis to be determined by the authority in accordance with the provisions of section sixteen of this article.

(e) If a county board of education proposes to finance a project that is approved pursuant to section sixteen of this article through a lease with an option to purchase leased premises upon the expiration of the total lease period pursuant to an investment contract, the authority may allocate no moneys to the county board in connection with the project: Provided, That the authority may transfer moneys to the state board of education, which, with the authority, shall lend the amount
transferred to the county board to be used only for a one-time payment due at the beginning of the lease term, made for the purpose of reducing annual lease payments under the investment contract, subject to the following conditions:

(1) The loan shall be secured in the manner required by the authority, in consultation with the state board, and shall be repaid in a period and bear interest at a rate as determined by the state board and the authority and shall have such terms and conditions as are required by the authority, all of which shall be set forth in a loan agreement among the authority, the state board and the county board;

(2) The loan agreement shall provide for the state board and the authority to defer the payment of principal and interest upon any loan made to the county board during the term of the investment contract, and annual renewals of the investment contract, among the state board, the authority, the county board and a lessor: Provided, That in the event a county board, which has received a loan from the authority for a one-time payment at the beginning of the lease term, does not renew the subject lease annually until performance of the investment contract in its entirety is completed, the county board is in default and the principal of the loan, together with all unpaid interest accrued to the date of the default, shall at the option of the authority, in consultation with the state board, become due and payable immediately or subject to renegotiation among the state board, the authority and the county board: Provided, however, That if a county board renews the lease annually through the performance of the investment contract in its entirety, the county board shall exercise its option to purchase the leased premises: Provided further, That the failure of the county board to make a scheduled payment pursuant to the investment contract constitutes an event of default under the loan agreement: And provided further, That upon a default by a county board, the principal of the loan, together with all unpaid interest accrued
to the date of the default, shall at the option of the authority, in consultation with the state board, become due and payable immediately or subject to renegotiation among the state board, the authority and the county board: And provided further, That if the loan becomes due and payable immediately, the authority, in consultation with the state board, shall use all means available under the loan agreement and law to collect the outstanding principal balance of the loan, together with all unpaid interest accrued to the date of payment of the outstanding principal balance; and

(3) The loan agreement shall provide for the state board and the authority to forgive all principal and interest of the loan upon the county board purchasing the leased premises pursuant to the investment contract and performance of the investment contract in its entirety.

(f) To encourage county boards to proceed promptly with facilities planning and to prepare for the expenditure of any state moneys derived from the sources described in this subsection, any county board failing to expend money within three years of the allocation to the county board shall forfeit the allocation and thereafter is ineligible for further allocations pursuant to this subsection until the county board is ready to expend funds in accordance with an approved facilities plan: Provided, That the authority may authorize an extension beyond the three-year forfeiture period not to exceed an additional two years. Any amount forfeited shall be added to the total funds available in the school construction fund of the authority for future allocation and distribution.

(g) The remaining moneys that are determined by the authority to be available for distribution during the then current fiscal year from moneys paid into the school major improvement fund pursuant to section six of this article shall be allocated and distributed on the basis of need and efficient use
of resources, the basis to be determined by the authority in accordance with the provisions of section sixteen of this article: Provided, That the moneys may not be distributed to any county board that does not have an approved school major improvement plan or to any county board that is not prepared to commence expenditures of the funds during the fiscal year in which the moneys are distributed: Provided, however, That any moneys allocated to a county board and not distributed to that county board shall be deposited in an account to the credit of that county board, the principal amount to remain to the credit of and available to the county board for a period of two years. Any moneys which are unexpended after a two-year period shall be redistributed on the basis of need from the school major improvement fund in that fiscal year.

(h) No local matching funds may be required under the provisions of this section. However, the responsibilities of the county boards of education to maintain school facilities are not negated by the provisions of this article. To be eligible to receive an allocation of school major improvement funds from the authority, a county board must have expended in the previous fiscal year an amount of county moneys equal to or exceeding the lowest average amount of money included in the county board’s maintenance budget over any three of the previous five years and must have budgeted an amount equal to or greater than the average in the current fiscal year: Provided, That the state board of education shall promulgate rules relating to county boards’ maintenance budgets, including items which shall be included in the budgets.

(i) Any county board may use moneys provided by the authority under this article in conjunction with local funds derived from bonding, special levy or other sources. Distribution to a county board, or to the state board or the administrative council of an area vocational educational center pursuant to subsection (b) of this section, may be in a lump sum or in
accompanying with a schedule of payments adopted by the
authority pursuant to guidelines adopted by the authority.

(j) Funds in the school construction fund shall first be
transferred and expended as follows:

Any funds deposited in the school construction fund shall
be expended first in accordance with an appropriation by the
Legislature. To the extent that funds are available in the school
construction fund in excess of that amount appropriated in any
fiscal year, the excess funds may be expended in accordance
with the provisions of this article. Any projects which the
authority identified and announced for funding on or before the
first day of August, one thousand nine hundred ninety-five, or
identified and announced for funding on or before the
thirty-first day of December, one thousand nine hundred
ninety-five, shall be funded by the authority in an amount
which is not less than the amount specified when the project
was identified and announced.

(k) It is the intent of the Legislature to encourage county
boards to explore and consider arrangements with other
counties that may facilitate the highest and best use of all
available funds, which may result in improved transportation
arrangements for students, or which otherwise may create
efficiencies for county boards and the students. In order to
address the intent of the Legislature contained in this subsec-
tion, the authority shall grant preference to those projects which
involve multicounty arrangements as the authority shall
determine reasonable and proper.

(l) County boards shall submit all designs for construction
of new school buildings to the school building authority for
review and approval prior to preparation of final bid docu-
ments: Provided, That a vendor who has been debarred pursu-
ant to the provisions of sections thirty-three-a through thirty-
three-f, article three, chapter five-a of this code, may not bid on
or be awarded a contract under this section.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.

§18B-5-5. Prequalification disclosure by vendors; register of vendors; exceptions; suspension of vendors.

(a) Every person, firm or corporation selling or offering to sell to the governing boards, upon competitive bids or otherwise, any materials, equipment or supplies in excess of fifteen thousand dollars shall comply with all of the provisions of section twelve, article three, chapter five-a of this code and shall file with the director of the purchasing division of the state of West Virginia the affidavit required herein: Provided, That every such person, firm or corporation who is presently in compliance with said section shall not be required to requalify thereunder to be able to transact business with the governing boards.

(b) Any person, firm or corporation failing or refusing to comply with said statute as herein required shall be ineligible to sell or offer to sell commodities or printing to the governing boards as hereinafter set forth: Provided, That any person suspended under the provisions of section thirty-nine, article three, chapter five-a of this code shall not be eligible to sell or offer to sell commodities or printing to the governing boards: Provided, however, That the governing boards shall have the power and authority to suspend, for a period not to exceed one year, the right and privilege of a person to bid on purchases of the governing boards when there is reason to believe that such person has violated any of the provisions in sections four through seven of this article or the rules of the governing boards pursuant thereto. Every person whose right to bid has been so suspended shall be notified thereof by a letter posted by
registered mail containing the reason for such suspension and shall have the right to have the appropriate governing board's action reviewed in accordance with section forty, article three, chapter five-a of this code: Provided further, That a vendor who has been debarred pursuant to the provisions of sections thirty-three-a through thirty-three-f, article three, chapter five-a of this code, may not bid on or be awarded a contract under this section.

CHAPTER 275

(Com. Sub. for H. B. 2060 — By Delegates Givens and Martin)

[Passed March 9, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article four, relating to granting priority to veterans in certain training programs.

Be it enacted by the Legislature of West Virginia:

That chapter nine-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 four, to read as follows:

ARTICLE 4. VETERANS EMPLOYMENT TRAINING PRIORITY.

§9A-4-1. Purpose.
§9A-4-2. Definitions.
§9A-4-3. Program eligibility.
§9A-4-4. Application for priority of services.
§9A-4-5. Priority of services.
§9A-4-6. Federal law.
§9A-4-1. Purpose.

(a) The Legislature finds that West Virginia veterans represent a strong and productive part of the workforce of this state. They are frequently disadvantaged in their pursuit of civilian employment as a result of military service and delayed entry into the civilian labor market. It is, therefore, in the public interest and welfare that veterans continue to be provided the traditional priority of services in workforce development programs administered under the provisions of the federal Workforce Investment Act of 1998.

(b) The purpose of this article is to require all federal and state funded employment and training programs offered within West Virginia to adopt a written policy providing priority of service to veterans of the United States military over other individuals seeking employment and training services.

§9A-4-2. Definitions.

(a) "Eligible veteran" means a person who:

(1) Served on active duty and was discharged or released from active duty with an honorable discharge or because of a service-connected disability; or

(2) As a member of a reserve component under an order to active duty, served on active duty during a period of war or in a campaign or expedition for which a campaign badge or ribbon is authorized and was discharged or released from such duty with an honorable discharge.

(b) "Priority of service" means the right to priority in any employment or training program offered citizens of West Virginia which is funded, in whole or in part, through federal or state moneys.
(c) "Reserve component" means any branch of the military which is called up to active duty, including any military defense forces.

(d) "Training program" means a program that provides training leading to qualification for employment, or improved skills, or both, funded in whole or in part through the workforce investment act or another federal or state act administered through the state and having as its primary purpose workforce development.

(e) "Training provider" means any private or public entity which has been certified by competent authority to provide training funded by federal or state funds appropriated in the budget under the jobs training partnership act or another federal or state act having as its primary purpose workforce development.

§9A-4-3. Program eligibility.

For a veteran to receive a priority in services designation for a federal or state funded training program, the veteran shall first meet the eligibility criteria and qualifications of the specific program.

§9A-4-4. Application for priority of services.

A veteran shall make application for a priority of services designation with the training provider by completing required documentation and identifying to the satisfaction of the training provider his or her eligibility in accordance with subsection (b), section two of this article.

§9A-4-5. Priority of services.

An eligible veteran who has applied for and received a priority of services designation and who has otherwise met the eligibility criteria for employment training through a federal or
state funded program shall be placed in a pool of eligible
applicants, ordered on the date of eligibility. If both veterans
and nonveterans are certified eligible on the same day, veterans
shall be afforded priority in enrollment in the following
manner:

(A) First priority shall be awarded to service-connected
disabled veterans;

(B) Second priority shall be awarded to other eligible
veterans;

(C) Third priority shall be awarded to nonveterans.

§9A-4-6. Federal law.

Provisions of this article shall be superseded by federal
laws and regulations which are more stringent or which provide
specific veterans preference or priority of service relative to
administering employment and training programs.

CHAPTER 276

(Com. Sub. for H. B. 4425 — By Delegates Martin, Givens,
Varner, Stemple, Cann, Mattaliano and Coleman)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty-two, chapter twenty-nine of the
code of West Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new section, designated section
nine-a, relating to lottery; providing for a scratch-off game to
benefit veterans for a limited time; creating a special fund within
the state treasury; authorizing the Legislature to appropriate the
special lottery funds to construct skilled nursing beds for veter-
ans; requiring lottery commission to change design or theme of
game on a regular basis; requiring the health care authority to
conduct a survey to determine need for skilled nursing beds for
veterans; requiring authority to report its findings to the joint
committee on government and finance.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. STATE LOTTERY ACT.

§29-22-9a. Veterans instant lottery scratch-off game.

(a) Beginning the first day of September, two thousand, the
commission shall establish an instant lottery scratch-off game
designated as the veterans benefit game, which shall be offered
by the lottery. The lottery shall offer the veterans benefit game
until the amount of money in the veterans lottery fund created
under this section reaches six million dollars.

(b) Notwithstanding the provisions of section eighteen of
this article, and subject to the provisions of subsection (d) of
this section, all net profits received from the sale of veterans
benefit game lottery tickets, materials and games shall be
deposited with the state treasurer into the veterans lottery fund
created under this section, and the Legislature may make
appropriations from this fund for the construction of skilled
nursing beds for veterans of the armed forces of the United
States military.

(c) Before appropriation of any of the net profits derived
from the veterans benefit game for the uses set forth in this
section, the Legislature shall first determine that the state has
met all debt obligations for which lottery profits have been pledged for that fiscal year.

(d) There is hereby created in the state treasury a special revenue fund designated and known as the veterans lottery fund which shall consist of all revenues derived from the veterans benefit game, any appropriations to the fund by the Legislature, and all interest earned from investment of the fund and any gifts, grants or contributions received by the fund. Revenues received by the veterans lottery fund shall be deposited in the West Virginia consolidated investment pool with the West Virginia investment management board, with the interest income a proper credit to all such funds.

(e) The commission shall change the design or theme of the veterans benefit game regularly so that the game remains competitive with the other instant lottery scratch-off games offered by the commission. The tickets for the instant lottery game created in this section shall clearly state that the profits derived from the game are being used to benefit veterans in this state.

(f) The health care authority created under section five, article twenty-nine-b, chapter sixteen of this code, shall conduct a survey to determine the need for skilled nursing beds for veterans in this state. The survey shall determine the number of veterans in existing nursing homes in this state; the number of nursing homes collecting reimbursement from the veterans administration; where the veterans are located within this state; the number of skilled nursing beds that currently exist in the areas in which the veterans are located; and any other information necessary to determine the need for skilled nursing beds for veterans in this state. The authority shall also determine the manner in which federal reimbursement may be maximized for these skilled nursing beds: Provided, That the authority, when determining the best method of maximizing reimbursement,
shall consider the requirement that veterans pay a fee for residing in the nursing homes through a sliding fee scale based upon ability to pay. The authority shall also determine the benefits of locating the skilled nursing beds adjacent to existing veterans administration medical facilities as a means of minimizing the cost of construction and to avoid duplication of services. The authority shall report its findings to the joint committee on government and finance by the first day of November, two thousand.

CHAPTER 277

(Com. Sub. for S. B. 427 — By Senators Tomblin, Mr. President, and Sprouse)  
[By Request of the Executive]

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]  

AN ACT to amend and reenact sections two and three, article twenty-three, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact article twenty-four of said chapter; to amend article ten, chapter seventeen-a of said code by adding thereto a new section, designated section sixteen; to amend and reenact section eight, article eleven, chapter twenty of said code; to amend article fifteen, chapter twenty-two of said code by adding thereto a new section, designated section twenty-one; and to amend and reenact section one-b, article two, chapter twenty-four of said code, all relating generally to waste tires; prohibiting collection, accumulation or storage of waste tires in salvage yards; providing for exceptions; defining terms; establishing legislative findings and policy regarding urgent need for remediation of waste tire piles; creating definitions; prohibiting placing, depositing or abandoning waste tires on public or private property; creating exceptions
for waste tire monofills, solid waste facilities and other business authorized to accept or process waste tires; providing for enforcement as illegal open dump; authorizing the division of highways to administer funds for waste tire remediation; authorizing the commissioner of the division of highways to contract with public and private entities to carry out the requirements of the act; authorizing the commissioner of the division of highways to establish a waste tire collection program; authorizing promulgation of rules; providing for the disposal of waste tires; creating tire remediation/environmental cleanup fund; authorizing proceeds of waste tire sales to be deposited into fund; establishing a fee on the issuance of a certificate of title for purpose of tire remediation and environmental cleanup; providing for a performance review; authorizing remedies; making property owner responsible for waste tires on property; assessing costs of remediation; creating lien to recover cost of remediation; authorizing injunctive relief; establishing authority of commissioner of bureau for public health; authorizing disposal of waste tires collected in a remediation effort in solid waste facilities; providing that waste tires from remediation not subject to tipping fees or tonnage limits; requiring solid waste facilities to accept waste tires; authorizing reasonable fees; providing that waste tires from remediation or cleanup projects may only be deposited in a solid waste facility when there is no other alternative available; requiring tire retailers to accept a waste tire for each new tire sold; authorizing disposal fee; requiring purchaser to leave waste tires with retailer or sign waiver; posting of signs; prohibiting accumulation of waste tires without a permit; prohibiting disposal of waste tires except at facility with valid permit; prohibiting transportation of waste tires to facility without permit; prohibiting open burning of tires; and requiring public service commission establish rule for collection of waste tires by commercial haulers.

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

Chapter

17. Roads and Highways.

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

20. Natural Resources.

22. Environmental Resources.


CHAPTER 17. ROADS AND HIGHWAYS.

Article

23. Salvage Yards.

24. Waste Tire Remediation.

ARTICLE 23. SALVAGE YARDS.


As used in this article:

(a) “Abandoned salvage yard” means any unlicenced salvage yard or any salvage yard that was previously licensed but upon which the license has not been renewed for more than one year.

(b) “Commissioner” means the commissioner of the West Virginia division of highways.
(c) "Fence" means an enclosure, barrier or screen constructed of materials or consisting of plantings, natural objects or other appropriate means approved by the commissioner and located, placed or maintained so as effectively to screen at all times salvage yards and the salvage therein contained from the view of persons passing upon the public roads of this state.

(d) "Occupied private residence" means a private residence which is occupied for at least six months each year.

(e) "Owner or operator" includes an individual, firm, partnership, association or corporation or the plural thereof.

(f) "Residential community" means an area wherein five or more occupied private residences are located within any one thousand foot radius.

(g) "Salvage" means old or scrap brass, copper, iron, steel, other ferrous or nonferrous materials, batteries or rubber and any junked, dismantled or wrecked machinery, machines or motor vehicles or any parts of any junked, dismantled or wrecked machinery, machines or motor vehicles.

(h) "Salvage yard" means any place which is maintained, operated or used for the storing, keeping, buying, selling or processing of salvage, or for the operation and maintenance of a motor vehicle graveyard: Provided, That no salvage yard shall accept, store or process more than one hundred waste tires unless it has all permits necessary to operate a monofill, waste tire processing facility or solid waste facility. Any salvage yard which currently has on its premises more than one hundred waste tires not on a vehicle must establish a plan in conjunction with the division of environmental protection for the proper disposal of the waste tires.

(i) "Waste tire" means any continuous solid or pneumatic rubber covering designed to encircle the wheel of a vehicle but
which has been discarded, abandoned or is no longer suitable for its original, intended purpose nor suitable for recapping, or other beneficial use, as defined in section two, article twenty-four, chapter seventeen of this code, because of wear, damage or defect. A tire is no longer considered to be suitable for its original intended purpose when it fails to meet the minimum requirements to pass a West Virginia motor vehicle safety inspection. Used tires located at a commercial recapping facility or tire dealer for the purpose of being reused or recapped are not waste tires.

(j) “Waste tire monofill or monofill” means an approved solid waste facility where waste tires not mixed with any other waste are placed for the purpose of long term storage for eventual retrieval for marketing purposes.

(k) “Waste tire processing facility” means a solid waste facility or manufacturer that accepts waste tires generated by sources other than the owner or operator of the facility for processing by such means as cryogenics, pyrolysis, pyroprossing cutting, splitting, shredding, quartering, grinding or otherwise breaking down waste tires for the purposes of disposal, reuse, recycling or marketing.

§17-23-3. License required; issuance; fee; renewal; disposition of fees.

No salvage yard or any part thereof shall be established, operated or maintained without a state license. The commissioner shall have the sole authority to issue such a state license, and he or she shall charge therefore a fee of two hundred dollars payable annually in advance. No license shall be issued to any salvage yard that contains more than one hundred waste tires which are not mounted on wheels on vehicles or machines unless the salvage yard has received a license, permit or approval from the division of environmental protection for storage, use or processing of waste tires or has entered into an
agreement with the division of environmental protection for the
proper disposal of the waste tires. All licenses issued under this
section shall expire on the first day of January following the
date of issuance. A license may be renewed from year to year
upon paying the commissioner the sum of two hundred dollars
for each renewal. All renewal license fees collected under the
provisions of this article shall be deposited in the special fund
provided for in section ten of this article.

ARTICLE 24. WASTE TIRE REMEDIATION.

§ 17-24-1. Legislative findings; statement of policy.
§ 17-24-2. Definitions.
§ 17-24-3. Waste tires prohibited in certain places; penalty.
§ 17-24-4. Division of highways to administer funds for waste tire remediation; rules
authorized; duties of commissioner.
§ 17-24-5. Disposal of waste tires.
§ 17-24-6. Creation of tire remediation environmental cleanup fund; proceeds from
sale of waste tires; fee on issuance of certificate of title; performance
review.
§ 17-24-7. Remediation; liability for remediation and court costs.
§ 17-24-8. Injunctive relief; additional remedy.

§ 17-24-1. Legislative findings; statement of policy.

The Legislature finds that innovative approaches are needed
to addressing proper management of the wastes continually
generated by the state and national highway transportation
system. The Legislature further finds that waste tire piles are a
direct product of state citizens use and enjoyment of state roads
and highways and proper tire waste disposal is a necessary
component of maintenance of the transportation system. The
accumulation of waste tires has also become a significant
environmental and public health hazard to the state and the
location and number of waste tires are directly related to the
efficiency of travel, by citizens, visitors and of commerce,
along public highways in West Virginia. In particular, the
Legislature recognizes that waste tires are widespread in location and in number throughout the state; waste tires physically touch and concern public highways, including, but not limited to, state roads, county roads, park roads, secondary routes and orphan roads, all of which interferes with the efficiency of public highways; and further that the existence of waste tires along and near public highways is sometimes accompanied by other hazards and, in turn, adversely impacts the proper maintenance and efficiency of public highways for citizens.

The Legislature also recognizes and declares that waste tires are a public nuisance and hazard; that waste tires serve as harborage and breeding places for rodents, mosquitoes, fleas, ticks and other insects and pests injurious to the public health, safety and general welfare; that waste tires collected in large piles pose an excessive risk to public health, safety and welfare from disease or fire; that the environmental, economic and societal damage resulting from fires in waste tire piles can be avoided by removing the piles; and that tire pile fires cause extensive pollution of the air and surface and ground water for miles downwind and downstream from the fire.

Therefore, in view of these findings the Legislature declares it to be the public policy of the state of West Virginia to eliminate the present danger resulting from discarded or abandoned waste tires and to eliminate the visual pollution resulting from waste tire piles, and that in order to provide for the public health, safety and welfare, quality of life, and to reverse the adverse impacts to the proper maintenance and efficiency of public highways, it is necessary to enact legislation to those ends by providing expeditious means and methods for effecting the disposal of waste tires.

§17-24-2. Definitions.
Unless the context clearly indicates a different meaning, as used in this article:

(1) "Beneficial use" means the use or reuse of whole waste tires or tire derived material which are reused in constructing retaining walls, rebuilding highway shoulders and subbase, building highway crash attenuation barriers, feed hopper or watering troughs for livestock, other agricultural uses approved by the division of environmental protection, playground equipment, boat or truck dock construction, house or building construction, go-cart, motorbike or race track barriers, or similar types of beneficial applications: Provided, That waste tires may not be reused as fencing, as erosion control structures, along stream banks or river banks or reused in any manner where human health or the environment, as determined by the director of the division of environmental protection, is put at risk.

(2) "Commissioner" means the commissioner of the division of highways or his or her designee.

(3) "Division" means the division of highways.

(4) "Person" includes a natural person, corporation, firm, partnership, association or society, and the plural as well as the singular.

(5) "Remediate or Remediation" means to remove all tires located above grade at a site and may also include, at the discretion of the division, the removal of the solid waste incidental to the removal of waste tires at a site: Provided, That remediation does not include clean up of hazardous waste.

(6) "Waste tire" means any continuous solid or pneumatic rubber covering designed to encircle the wheel of a vehicle but which has been discarded, abandoned or is no longer suitable for its original, intended purpose nor suitable for recapping, or
other beneficial use because of wear, damage or defect. A tire is no longer considered to be suitable for its original intended purpose when it fails to meet the minimum requirements to pass a West Virginia motor vehicle safety inspection. Used tires located at a commercial recapping facility or tire dealer for the purpose of being reused or recapped are not waste tires.

(7) "Waste tire monofill or monofill" means an approved solid waste facility where no solid waste except waste tires are placed for the purpose of long term storage for eventual retrieval for marketing purposes.

(8) "Waste tire processing facility" means a solid waste facility or manufacturer that accepts waste tires generated by sources other than the owner or operator of the facility for processing by such means as cryogenics, pyrolysis, pyroprossing cutting, splitting, shredding, quartering, grinding or otherwise breaking down waste tires for the purposes of disposal, reuse, recycling and/or marketing.

§17-24-3. Waste tires prohibited in certain places; penalty.

(a) No person shall, within this state, place, deposit or abandon any waste tire or part thereof upon the right-of-way of any public highway or upon any other public property nor deposit or abandon any waste tire or part thereof upon any private property unless it is at a licensed monofill, solid waste facility or at any other business authorized by the division of environmental protection to accept, process, manufacture or re-manufacture waste tires: Provided, That the commissioner may temporarily accumulate as many waste tires as he or she deems necessary at any location or locations necessary to effectuate the purposes of this article.

(b) No person, except those persons who have received and maintain a valid permit or license from the state for the operation of a solid waste facility, waste tire monofill, waste tire
processing facility, or other such permitted activities, shall accumulate more than one hundred waste tires for beneficial use without obtaining a license or permit from the division of environmental protection.

(c) Any person who violates any provision of this section shall be guilty of creating an open dump and subject to enforcement actions or prosecution under the provisions of article fifteen, chapter twenty-two of this code.

§17-24-4. Division of highways to administer funds for waste tire remediation; rules authorized; duties of commissioner.

(a) The division of highways shall administer all funds made available to the division for remediation of waste tire piles and for the proper disposal of waste tires removed from waste tire piles. The commissioner of the division of highways is hereby authorized and empowered: (i) To propose for legislative promulgation in accordance with article three, chapter twenty-nine-a of this code, emergency and legislative rules necessary to implement the provisions of this article; and (ii) to administer all funds appropriated by the Legislature to carry out the requirements of this article, and any other funds from whatever source, including, but not limited to, federal, state or private grants.

(b) The commissioner shall also have the following powers:

(1) To apply and carry out the provisions of this article and the rules promulgated hereunder.

(2) To investigate from time to time the operation and effect of this article and of the rules promulgated hereunder and to report his or her findings and recommendations to the Legislature and the governor.
(c) The provisions of articles two-a and four, chapter seventeen of this code and the policy, rules, practices and procedures thereunder shall be followed by the commissioner in carrying out the purposes of this article.

(d) On or before the first day of June, two thousand one, the commissioner shall determine the location, approximate size and potential risk to the public of all waste tire piles in the state and establish, in descending order, a waste tire remediation list.

(e) The commissioner may contract with the department of health and human resources and/or the division of corrections to remediate or assist in remediation of waste tire piles throughout the state. Utilization of available department of health and human resources and the department of corrections work programs shall be given priority status in the contract process so long as such programs prove a cost effective method of remediating waste tire piles.

(f) Waste tire remediation shall be stopped and the division of environmental protection notified upon the discovery of any potentially hazardous material at a remediation site. The division of environmental protection shall respond to the notification in accordance with the provisions of article eighteen, chapter twenty-two of this code.

(g) The commissioner is authorized to establish a tire disposal program within the division to provide for a cost effective and efficient method to accept passenger car and light truck waste tires at such division of highways county headquarters as have sufficient space for temporary storage of waste tires and personnel to accept and handle waste tires. The commissioner may pay a fee for each tire an individual West Virginia resident or West Virginia business brings to the division. The commissioner may establish a limit on the number of tires an individual or business may be paid for during any calendar month. The commissioner may in his discretion authorize
commercial businesses to participate in the collection program:

Provided. That no person or business who has a waste tire pile subject to remediation under this article may participate in this program.

§17-24-5. Disposal of waste tires.

(a) The division may sell waste tires collected during remediation of waste tire piles at public auction or to a waste tire monofill, waste tire processing facility or business authorized by the division of environmental protection to accept, store, use or process waste tires.

(b) If there is no market in West Virginia for the sale of waste tires the division may sell them at any available market.

(c) If there is no market for the sale of waste tires the division may dispose of them in any lawful manner.

§17-24-6. Creation of tire remediation environmental cleanup fund; proceeds from sale of waste tires; fee on issuance of certificate of title; performance review.

(a) There is hereby created in the state treasury a special revenue fund known as the “Tire Remediation/Environmental Cleanup Fund”. All moneys appropriated, deposited or accrued in this fund shall be used exclusively for remediation of waste tire piles as required by article twenty-four, chapter seventeen of this code. The fund shall consist of the proceeds from the sale of waste tires; fees collected by the division of motor vehicles as provided for in section sixteen, article ten, chapter seventeen-a of this code; any federal, state or private grants; legislative appropriations; loans and any other funding source available for waste tire remediation. Any balance remaining in the fund at the end of any state fiscal year shall not revert to the state treasury but shall remain in this fund and be used only in
a manner consistent with the requirements of article twenty-

four, chapter seventeen of this code.

(b) No further collections or deposits shall be made after
the commissioner certifies to the governor and the Legislature
that the remediation of all waste tire piles that were determined
by the commissioner to exist on the first day of June, two
thousand one, has been completed.

(c) The joint committee on government operations shall,
pursuant to authority granted in article ten of chapter four of
this code, conduct a preliminary performance review of the
division’s compliance with the waste tire remediation mandated
in this article: whether the purposes of this article have been
met and whether it is appropriate to terminate this program. In
conducting such preliminary performance review, the commit-
tee shall follow the guidelines established in article ten, section
ten, chapter four of this code. A preliminary review shall be
completed on or before the first day of January, two thousand
three.

§17-24-7. Remediation; liability for remediation and court costs.

(a) Any person who has prior or subsequent to the effective
date of this act illegally disposed of waste tires or has waste
tires illegally disposed on his or her property shall be liable for:

(1) All costs of removal or remedial action incurred by the
division;

(2) Any other necessary costs of remediation including
properly disposing of waste tires and damage to adjacent
property owners, and

(3) All costs incurred in bringing civil actions under this
article.
(b) The division shall notify any person who owns real property or rights to property where a waste tire pile is located that remediation of the waste tire pile is necessary. The division shall make and enter an order directing such person or persons to remove and properly dispose of the waste tires. The division shall set a time limit for completion of the remediation. The order shall be served by registered or certified mail, return receipt requested, or by a county sheriff or deputy sheriff.

(c) If the remediation is not completed within the time limit, or the person cannot be located, or the person notifies the division that he or she is unable to comply with the order, the division may expend funds, as provided herein, to complete the remediation. Any amounts so expended shall be promptly repaid by the person or persons responsible for the waste tire pile. Any person owing remediation costs and or damages shall be liable at law until such time as all costs and or damages are fully paid.

(d) Authorized representatives of the division have the right, upon presentation of proper identification, to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of a waste tire pile, to determine the feasibility of the remediation or prevention of such adverse effects and to conduct remediation activities provided for herein. Such entry is an exercise of the police power of the state and for the protection of public health, safety and general welfare and is not an act of condemnation of property or trespass thereon. Nothing contained in this section eliminates any obligation to follow any process that may be required by law.

(e) There is hereby created a statutory lien upon all real property and rights to the property from which a waste tire pile was remediated for all reclamation costs and damages incurred
by the division. The lien created by this section shall arise at the
later of the following:

(1) The time costs are first incurred by the division; or

(2) The time the person is provided, by certified or regis-
tered mail, or personal service, written notice as required by
this section.

The lien shall continue until the liability for the costs or
judgment against the property is satisfied.

(f) Liens created by this section shall be duly recorded in
the office of the clerk of the county commission in the county
where the real property is located, be liens of equal dignity,
rank and priority with the lien on such premises of state,
county, school and municipal taxes for the amount thereof upon
the real property served. The division shall have the power and
authority to enforce such liens in a civil action to recover the
money due for remediation costs and damages plus court fees
and costs and reasonable attorney’s fees.

(g) The division may foreclose upon the premises by
bringing a civil action, in the circuit court of the county where
the property is located, for foreclosure and an order to sell the
property to satisfy the lien.

(h) Any proceeds from any sale of property obtained as a
result of execution of a lien or judgment under this section for
remediation costs, excluding costs of obtaining judgement and
perfecting the lien, shall be deposited into the waste tire
remediation fund of the state treasury.

(i) The provisions of this section do not apply and no lien
may attach to the right-of-way, easement or other property
interest of a utility, whether electric, gas, water, sewer, tele-
phone, television cable or other public service unless the utility
contributed to the illegal tire pile.
§17-24-8. Injunctive relief; additional remedy.

In addition to all other remedies provided for in this article, the attorney general of this state, the prosecuting attorney of any county where any violation of any provision of this article occurs, or any citizen, resident or taxpayer of the county where any violation of any provision of this article occurs, may apply to the circuit court, or the judge thereof in vacation, of the county where the alleged violation occurred, for an injunction to restrain, prevent or abate the maintenance and storage of waste tires in violation of any provision of this article, or the violation of any other provision of this article. In seeking an injunction, it is not necessary for the director or any state agency seeking an injunction under section to post bond.


Although the director is primarily responsible for remediation of waste tire piles under the provisions of this article, the commissioner of the bureau of public health may enforce the public health laws in any instance where the commissioner of the bureau of public health determines there is an imminent and substantial endangerment to the public health.

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

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-16. Fee for tire remediation environmental cleanup fund.

In addition to each fee provided for in this article, an additional five dollar fee shall be imposed on the issuance of each certificate of title issued pursuant to article three of this chapter. All money collected under this section shall be
deposited in the state treasury and credited to a tire remediation/environmental cleanup fund to be established within the department of highways, for waste tire remediation in accordance to the provisions of article twenty-four, chapter seventeen of this code. The additional fee provided herein shall be imposed for each application for certificate and renewal thereof made on or after the first day of July, two thousand:

Provided, That no further collections or deposits shall be made after the commissioner certifies to the governor and the Legislature that the remediation of all waste tire piles that were determined by the commissioner to exist on the first day of June, two thousand one, has been completed.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 11. WEST VIRGINIA RECYCLING PROGRAM.

§20-11-8. Prohibition on the disposal of certain items; plans for the proper handling of said items required.

(a) Effective the first day of June, one thousand nine hundred ninety-four, it shall be unlawful to dispose of lead-acid batteries in a solid waste landfill in West Virginia; effective the first day of June, one thousand nine hundred ninety-six, it shall be unlawful to dispose of tires in a solid waste landfill in West Virginia except for waste tires collected as part of the division of highways waste tire remediation projects or other collection efforts in accordance with the provisions of article twenty-four, chapter seventeen of this code or the division of environmental protection's pollution prevention program and open dump program or other state authorized remediation or cleanup programs: Provided, That waste tires may be disposed of in solid waste landfills only when the state agency authorizing the remediation or cleanup program has determined there is no reasonable alternative available.
(b) Effective the first day of January, one thousand nine hundred ninety-seven, it shall be unlawful to dispose of yard waste, including grass clippings and leaves, in a solid waste facility in West Virginia: Provided, That such prohibitions do not apply to a facility designed specifically to compost such yard waste or otherwise recycle or reuse such items: Provided, however, That reasonable and necessary exceptions to such prohibitions may be included as part of the rules promulgated pursuant to subsection (d) of this section.

(c) No later than the first day of May, one thousand nine hundred ninety-five, the solid waste management board shall design a comprehensive program to provide for the proper handling of yard waste and lead-acid batteries. No later than the first day of May one thousand nine hundred ninety-four, a comprehensive plan shall be designed in the same manner to provide for the proper handling of tires.

(d) No later than the first day of August, one thousand nine hundred ninety-five, the division of environmental protection shall promulgate rules, in accordance with chapter twenty-nine-a of this code, as amended, to implement and enforce the program for yard waste and lead-acid batteries designed pursuant to subsection (c) of this section. No later than the first day of August, two thousand, the division of environmental protection shall promulgate rules, in accordance with chapter twenty-nine-a of said code, as amended, to implement and enforce the program for tires designed pursuant to subsection (c) of this section.

(e) For the purposes of this section, "yard waste" means grass clippings, weeds, leaves, brush, garden waste, shrub or tree prunings and other living or dead plant tissues, except that, such materials which, due to inadvertent contamination or mixture with other substances which render the waste unsuitable for composting, shall not be considered to be yard waste:
Provided, That the same or similar waste generated by commercial agricultural enterprises is excluded.

(f) In promulgating the rules required by subsections (c) and (d) of this section, yard waste, as described in subsection (e) of this section, the division shall provide for the disposal of yard waste in a manner consistent with one or any combination of the following:

(1) Disposal in a publicly or privately operated commercial or noncommercial composting facility.

(2) Disposal by composting on the property from which domestic yard waste is generated or on adjoining property or neighborhood property if consent is obtained from the owner of the adjoining or neighborhood property.

(3) Disposal by open burning where such activity is not prohibited by this code, rules promulgated hereunder or municipal or county codes or ordinances.

(4) Disposal in a publicly or privately operated landfill, only where none of the foregoing options are available. Such manner of disposal will involve only small quantities of domestic yard waste generated only from the property of the participating resident or tenant.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 15. SOLID WASTE MANAGEMENT ACT.


(a) No person, except those persons who have received and maintained a valid permit or license from the state for the operation of a solid waste facility, waste tire monofill, waste tire processing facility, or other such permitted activities, shall accumulate waste tires without obtaining a license or permit.
from the division: Provided, That persons who use waste tires for beneficial uses may in the discretion of the director of the division of environmental protection accumulate waste tires without a permit.

(b) No person shall dispose of waste tires in or upon any public or private land, any site or facility other than a site or facility which holds a valid permit issued by the division for such disposal or usage.

(c) No person shall knowingly transport or knowingly allow waste tires under his or her control to be transported to a site or facility that does not have a valid permit or license to accept waste tires.

(d) No person shall engage in the open burning of waste tires.

(e) Persons who violate this article are subject to all enforcement actions available to the director under the provisions of section fifteen, article fifteen, chapter twenty-two of this code.

(f) Except as otherwise provided in subsection (g) of this section, each retailer is required to accept one tire of comparable size for each new tire sold at retail. The retailer may charge a disposal fee to cover the actual costs of lawful waste tire disposal. No retail tire dealer may deliver any waste tire, or part thereof, to a person not authorized by the state of West Virginia to transport or accept waste tires.

(g) Any person purchasing a new tire from a retailer must provide a used or waste tire for each tire purchased or sign a waiver, provided to the tire retailer by the division, acknowledging that he or she is retaining the waste tire and that he or she is legally responsible for proper disposal of each tire retained. These forms are to be kept by the retailer for three
37 years. If the tire purchaser returns to the tire retailer with a
38 signed form given to the purchaser by that retailer, the retailer
39 must accept up to the total number of comparable size tires as
40 previously retained by the purchaser: Provided, That persons
41 having winter tires changed or buying new winter tires and
42 keeping usable summer tires for later installation are not
43 required to provide a used or waste tire, or sign a waiver.

44 (h) Each tire retailer shall post in a conspicuous place a
45 written notice, provided by the division, that bears the follow-
46 ing statements:

47 (1) “State law requires us to accept your (old) waste tires
48 for recycling or proper disposal if you purchase new tires from
49 us.”

50 (2) “State law authorizes us to charge you no more than the
51 actual cost of disposal of your waste tires even if you do not
52 leave your tires with us.”

53 (3) “It is a crime to burn, bury, abandon or throw away
54 waste tires without authorization and or permits from the
55 Division of Environmental Protection.”

56 This notice must be at least eight and one-half inches wide
57 and eleven inches high.

58 (i) Solid waste facilities shall accept whole waste tires and
59 may charge a reasonable fee for acceptance of waste tires. All
60 waste tires except those disposed of in a landfill shall be
61 excluded from the calculation of monthly tonnage limits and
62 from any solid waste disposal assessment fees imposed by
63 section five-a, article eleven, chapter twenty; section eleven,
64 article fifteen, chapter twenty-two, section four, article sixteen,
65 chapter twenty-two and section thirty, article four, chapter
66 twenty-two-c of this code.
(j) Solid waste facilities shall accept and dispose of whole tires from state authorized tire remediation projects. All waste tires from state authorized tire remediation projects except those disposed of in a landfill shall be excluded from the calculation of monthly tonnage limits and from any solid waste disposal assessment fees imposed by section five-a, article eleven, chapter twenty; section eleven, article fifteen, chapter twenty-two, section four, article sixteen, chapter twenty-two and section thirty, article four, chapter twenty-two-c of this code. For state sponsored tire remediation projects, the state may negotiate with the solid waste facility for rates and charges for the disposal of waste tires regardless of the rates and charges established by the public service commission pursuant to article one, chapter twenty-four of this code: Provided, That the disposal of whole tires in a solid waste facility is allowed only when the division of highways or the division of environmental protection has determined there is no other reasonable alternative available.

(k) The division shall propose for legislative promulgation emergency and legislative rules to effectuate the purposes of this section.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1b. Additional jurisdiction of commission.

(a) Effective the first day of July, one thousand nine hundred eighty-eight, in addition to all other powers and duties of the commission as defined in this article, the commission shall establish, prescribe and enforce rates and fees charged by commercial solid waste facilities, as defined in section two, article fifteen, chapter twenty-two of this code, that are owned or under the direct control of persons or entities who are regulated under section five, article two, chapter twenty-four-a
of this code. The commission shall establish, prescribe and enforce rules providing for the safe transportation of solid waste in the state. The commission shall establish rules for the collection of waste tires by private commercial carriers of solid waste.

(b) The public service commission shall study the feasibility of incorporating and adopting guidelines for solid waste collection fees that are based upon the volume of solid waste generated by any person. This report shall be submitted to the governor and the members of the Legislature on or before the first day of January, one thousand nine hundred ninety-three.
outstanding at any one time: *Provided,* That before the authority
issues bonds and notes in excess of four hundred million dollars
the Legislature must pass a resolution authorizing this action:
*Provided, however,* That in computing the total amount of
bonds and notes which may at any one time be outstanding, the
principal amount of any outstanding bonds or notes refunded or
to be refunded either by application of the proceeds of the sale
of any refunding bonds or notes of the authority or by exchange
for any refunding bonds or notes, shall be excluded.

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**CHAPTER 279**

(Com. Sub. for S. B. 505 — By Senator Unger)

[Passed March 11, 2000; in effect June 1, 2000. Approved by the Governor.]

AN ACT to amend article ten-a, chapter eighteen of the code of West
Virginia, one thousand nine hundred thirty-one, as amended, by
adding thereto a new section, designated section twelve-a; and to
amend article twelve, chapter thirty-one-b of said code by adding
thereto a new section, designated section one thousand two
hundred seven, all relating to workers’ compensation; workers’
compensation coverage for clients of the division of rehabilitation
services participating in unpaid work-based training programs;
requiring annual report to the division of rehabilitation services;
designating division of rehabilitation services and the participat­
ing entity as the employers; providing participating entities with
immunity from liability to the division of workers’ compensation;
establishing wage rate for purpose of providing minimum benefits
to employers and employees subject to workers’ compensation
coverage; providing equivalent workers compensation treatment
for the members of limited liability companies; providing that
members and managers of limited liability companies may elect
to include or exclude coverage under workers’ compensation and
pay premiums as partners in a partnership; and providing
transition elections.
That article ten-a, 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 twelve-a; and that article twelve, chapter thirty-one-b of said code be amended by adding thereto a new section, designated section one thousand two hundred seven, all to read as follows:

Chapter
18. Education.

CHAPTER 18. EDUCATION.

ARTICLE 10A. REHABILITATION SERVICES.

§18-10A-12a. Workers' compensation for clients participating in unpaid work-based training programs.

(a) The workers' compensation division shall create a classification and calculate a base premium tax rate for clients of the division of rehabilitation services participating in unpaid work-based training programs within integrated community-based settings. The workers' compensation division shall report to the division of rehabilitation services:

(1) The amount of the base premium tax rate for the class; and

(2) The hourly wages per client to be used to provide the minimum weekly benefits required by section six, article four, chapter twenty-three of this code.

(b) The base premium tax rate reported annually to the division of rehabilitation services by the workers' compensation division shall not be effective until the first day of July, and shall remain in effect through the last day of the next June.

(c) The division of rehabilitation services and the participating entity shall be considered the joint employers of record of the clients while the clients are participating in unpaid work-based training programs in integrated community-based
settings: Provided, That the participating entity shall not be held responsible for any liability due the workers' compensation division. Such clients shall be considered to be paid the amount of wages sufficient to provide the minimum workers' compensation weekly benefits required by section six, article four, chapter twenty-three of this code.

CHAPTER 31B. UNIFORM LIMITED LIABILITY COMPANY ACT.

ARTICLE 12. MISCELLANEOUS PROVISIONS.


Members of limited liability companies which are treated as partnerships for federal income tax purposes may elect to forego coverage under workers' compensation in the same manner as partners in a partnership pursuant to the provisions of section one-a, article two, chapter twenty-three of this code, and any member not electing to forego coverage, shall be subject to the calculation of premium on the member as provided for partners in a partnership in section one-b, article two, chapter twenty-three of this code. Any limited liability company excluding any member from workers' compensation coverage or computing premiums on such member as a partner prior to the effective date of this section is deemed to have made an effective election in accordance with the provisions of this section for all periods until such limited liability company modifies the election.

CHAPTER 280

(H. B. 4388 — By Delegates Warner, Linch, Cann and Angotti)

[Passed March 9, 2000; in effect from passage. Approved by the Governor.]

AN ACT to extend the time for the county commission of Harrison County, West Virginia, to meet as a levying body for the purpose
of presenting to the voters of said county an election on the question of continuing the excess levy for bus services in Harrison County, from between the seventh and twenty-eighth days of March until the first Thursday in June, two thousand.

Be it enacted by the Legislature of West Virginia:

HARRISON COUNTY COMMISSION MEETING AS A LEVYING BODY EXTENDED FOR AN ELECTION ON THE QUESTION OF CONTINUING THE EXCESS LEVY FOR BUS SERVICES.

§1. Extending time for the Harrison County Commission to meet as a levying body for an election on the question of continuing the excess levy for bus services.

Notwithstanding the provisions of article eight, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, the county commission of Harrison County, West Virginia, is hereby authorized to extend the time for its meeting as a levying body, setting the levy rate and certifying its actions to the state tax commissioner from between the seventh and twenty-eighth days of March until the first Thursday in June, two thousand, for the purpose of submitting to the voters of Harrison County the question of continuing the excess levy for bus services in Harrison County.

CHAPTER 281

(Com. Sub. for S. B. 205 — By Senators Kessler, Edgell, Craigo, Jackson, Deem, Minard, Dittmar and Ross)

[Passed February 11, 2000; in effect from passage. Approved by the Governor.]
agreements extending more than one year without ratification by voters in participating jurisdictions.

Be it enacted by the Legislature of West Virginia:

That section two, chapter two hundred sixty-one, acts of the Legislature, regular session, one thousand nine hundred ninety-six, be amended and reenacted to read as follows:

HUGHES RIVER WATER BOARD.

§2. Board of directors; appointment; powers and duties.

(a) There shall be a board of directors, consisting of one member representing each of the participating municipalities. The municipalities shall make appointments to the board through their duly constituted government authorities as provided herein.

No later than the first day of July, one thousand nine hundred ninety-six, the municipality of Cairo shall appoint one member of the board of directors for the term of three years. The municipality of Harrisville shall appoint one member for the term of four years. The municipality of Pennsboro shall appoint one member for the term of five years. Although members shall serve from date of appointment, terms of office shall expire as if said terms had commenced on the first day of July, one thousand nine hundred ninety-six.

Each successor member of the board of directors shall be appointed by the respective municipality that appointed the predecessor member and each successor member shall be appointed for a term of three years, except that any person appointed to fill a vacancy occurring before the expiration of the term shall serve only for the unexpired portion thereof. Any member of the board shall be eligible for reappointment and the appointing municipality which appointed the member may remove that member at any time for any reason.

(b) There shall be an annual meeting of the board of directors on the second Monday in July of each year and a monthly meeting on the day in each month which the board
may designate in its bylaws. A special meeting may be called by the president or any two members of the board and shall be held only after all of the directors are given notice thereof in writing. At all meetings two members shall constitute a quorum and at each annual meeting of the board of directors it shall elect, from its membership, a president, a vice president, a secretary and a treasurer: Provided, That a member may be elected both secretary and treasurer.

(c) The board of directors shall adopt those bylaws and rules which it deems necessary for its own guidance and for the administration, supervision and protection of the water board and all of the property belonging to the water board.

The board of directors shall have all the powers necessary, convenient and advisable for the proper operation, equipment and management of the water board; and except as otherwise especially provided in this act, shall have the powers and be subject to the duties which are conferred and imposed upon the cooperating municipalities by article twenty-three, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended: Provided, That participating municipalities and the board may enter into agreements in furtherance of the Hughes River water project which extend for a period in excess of one fiscal year without voter approval as would otherwise be required pursuant to section eight of said article.

The qualifications of the directors shall be determined by each participating municipality.

CHAPTER 282
(S. B. 625 — By Senators Craigo and Dittmar)

[Passed February 25, 2000; in effect from passage. Approved by the Governor.]
to the voters of the county an election to consider an excess levy for the Jackson County health department from between the seventh and twenty-eighth days of March until the seventh day of June, two thousand.

Be it enacted by the Legislature of West Virginia:

JACKSON COUNTY COMMISSION MEETING AS LEVYING BODY EXTENDED.

§1. Extending time for Jackson County commission to meet as levying body for an election to consider an excess levy for the Jackson County health department.

Notwithstanding the provisions of article eight, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, to the contrary, the county commission of Jackson County is hereby authorized to extend the time for its meeting as a levying body and certifying its actions to the state tax commissioner from between the seventh and twenty-eighth days of March until the seventh day of June, two thousand, for the purpose of submitting to the voters of Jackson County an election to consider an excess levy for the Jackson County health department.

CHAPTER 283

(H. B. 4137 — By Delegates Manuel and Doyle)

[Passed March 10, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT authorizing the County Commission of Jefferson County, West Virginia, to convey certain land located in Ranson Corporation, Jefferson County, West Virginia, to the Jefferson County Council on Aging.

Be it enacted by the Legislature of West Virginia:
LAND TRANSFER TO JEFFERSON COUNTY COUNCIL ON AGING.

1 The County Commission of Jefferson County, a corporation, is authorized to grant and convey, without consideration, to the Jefferson County Council on Aging, all of those certain lots or parcels of real estate, with the improvements thereon, being Lots 22, 23, 24, 25, 26, 27 and 28 in Block 91, situate in Ranson Corporation, Jefferson County, West Virginia, fronting on Fifth Avenue. The lots are described on a plat of record in the Office of the Clerk of the County Commission of Jefferson County in Deed Book X, at Page 1. The property is more particularly bounded and described in a deed dated February 26, 1979, from the Board of Education of the County of Jefferson, a corporation, to the County Commission of Jefferson County, a corporation, recorded in the Office of the Clerk of the County Commission of Jefferson County, West Virginia, in Deed Book 689, at Page 611. The conveyance of the property is subject to all restrictions and reservations duly of record affecting the property.

CHAPTER 284

(H. B. 4126 — By Delegates Manchin, Caputo and Prunty)

[Passed February 2, 2000; in effect from passage. Approved by the Governor.]

AN ACT to extend the time for the county commission of Marion County, West Virginia, to meet as a levying body for the purpose of presenting to the voters of the county an election to extend an additional county levy for parks and recreation equipment and development in Marion County from between the seventh and twenty-eighth days of March until the twenty-first day of May, two thousand.
Be it enacted by the Legislature of West Virginia:

MARION COUNTY COMMISSION MEETING AS LEVYING BODY EXTENDED.

§1. Extending time for Marion County commission to meet as levying body for election of additional levy for parks and recreation equipment and development.

Notwithstanding the provisions of article eight, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, to the contrary, the county commission of Marion County is hereby authorized to extend the time for its meeting as a levying body and certifying its actions to the state tax commissioner from between the seventh and twenty-eighth days of March until the twenty-first day of May, two thousand, for the purpose of submitting to the voters of Marion County an additional county levy for parks and recreation equipment and development in Marion County.

CHAPTER 285

(Com. Sub. for S. B. 138 — By Senators Prezioso, Oliverio, Edgell, Kessler and Hunter)

[Passed March 10, 2000; in effect from passage. Approved by the Governor.]

AN ACT to extend the time for the county commission of Marion County to meet as a levying body for the purpose of presenting to the voters of the county an election to extend three additional county levies for parks and recreation equipment and development, libraries and the transit authority in Marion County from between the seventh and twenty-eighth days of March until the first day of June, two thousand.
Be it enacted by the Legislature of West Virginia:

MARION COUNTY COMMISSION MEETING AS LEVYING BODY EXTENDED.

§1. Extending time for Marion County commission to meet as levying body for an election for three additional levies.

Notwithstanding the provisions of article eight, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, to the contrary, the county commission of Marion County is hereby authorized to extend the time for its meeting as a levying body and certifying its actions to the state tax commissioner from between the seventh and twenty-eighth days of March until the first day of June, two thousand, for the purpose of submitting to the voters of Marion County three additional county levies for parks and recreation equipment and development, libraries and the transit authority in Marion County.

CHAPTER 286

(Com. Sub. for S. B. 501 — By Senators Bowman and Plymale)

[Passed March 11, 2000; in effect from passage. Approved by the Governor.]

AN ACT giving the secretary of administration options on how to dispose of the land, together with the improvements thereon, known as Morris Square in Charleston, Kanawha County; and authorizing same.

Be it enacted by the Legislature of West Virginia:

SALE OF PROPERTY.

§1. Land sale; description.
(a) The secretary of administration is hereby authorized to negotiate a financial proposal for the property described in subsection (b) of this act with the city of Charleston which arrangement shall be in the best financial interest for the state. Any financial proposal shall be funded either in cash or by a purchase money mortgage at a value acceptable to the secretary. The financial proposal must be made within ninety (90) days of the effective date of this section. Any contract, sale or lease shall be approved by the joint committee on government and finance.

(b) The secretary is authorized to sell, grant and convey or lease to the city of Charleston, all of those certain lots or parcels of land, together with the improvements thereon and the appurtenances thereunto belonging, being known as Lot “A-1” containing 1.118 acres, more or less; and Lot “A-2” containing 0.587 acre, more or less, being situate in the city of Charleston, Charleston East tax district, Kanawha County, West Virginia; which property is more particularly bounded and described in a deed dated October 29, 1996, from the Charleston building corporation to the state building commission of West Virginia, of record in the office of the clerk of the county commission of Kanawha County, West Virginia, in Deed Book 2399 at page 79. Any sale and conveyance of the property is subject to all restrictions, reservations, rights-of-way, easements, utilities, covenants, leases, exclusions and other matters duly of record affecting the property.

(c) If the subject property is not transferred to the city of Charleston pursuant to subsections (a) and (b) of this act, then the secretary shall solicit bids for sale by auction, sell, grant and convey, for good and valuable consideration to the highest responsible bidder, the property described in subsection (b) of this act. Any sale and conveyance of the property is subject to all restrictions, reservations, rights-of-way, easements, utilities,
34 covenants, leases, exclusions and other matters duly of record
35 affecting the property.

36 (d) The secretary is authorized to contract with an auction
37 company to sell the property. The auction may be oral, silent or
38 on the internet. The cost of the auction, as contracted by the
39 secretary with the auction company, is to be paid from the
40 proceeds of the sale.

41 (e) The property shall have a minimum bid price which
42 shall be set by the secretary, regardless of the appraised value,
43 for sale and conveyance of the property.

44 (f) The sale by auction shall take place no less than once a
45 year until the time the property is successfully sold.

46 (g) The money obtained from the property shall be depos-
47 ited in a special fund of the department of administration to be
48 known as “the Morris Square property fund” and is to be used
49 for improvements and renovations of the state capitol complex.

50 (h) Notwithstanding any other provision of law to the
51 contrary, the state, its subdivisions, agencies and instrumentali-
52 ties, except for the city of Charleston, are prohibited from
53 obtaining any interest, by way of purchase, lease, trade,
54 donation, condemnation, tax sale, or any other means whatever
55 in the property described in subsection (b) of this act, or
56 any interest therein, for so long as any building or structure or
57 any portion thereof situate on the property on the date of the
58 enactment of the provisions of this act remains so situated.

59 (i) Notwithstanding anything in the code of West Virginia,
60 one thousand nine hundred thirty-one, as amended, to the
61 contrary, the provisions of this section prevail.
AN ACT to authorize the commissioner of highways to allow the increase of gross weight limitations on certain designated roads in Ohio and Brooke counties.

Be it enacted by the Legislature of West Virginia:

WEIGHT LIMITATIONS ON CERTAIN ROADS IN OHIO AND BROOKE COUNTIES.

§1. Authority of the commissioner of the division of highways to increase weight limitations on certain highways within Ohio and Brooke counties of West Virginia.

If the commissioner of the division of highways determines that the design, construction and safety of certain highways designated herein in Brooke and Ohio counties of West Virginia are such that tonnage limits may be increased without undue damage, the commissioner may increase them. The commissioner shall then set new weight limitations applicable to said highways or portions thereof.

The commissioner may not establish any weight limitation in excess of or in conflict with any weight limitation prescribed by or pursuant to acts of Congress with respect to the national system of interstate and defense highways.

If the commissioner determines that the portion of State Route 2 from milepost 3.33 to the Ohio County line, the portion of State Route 2 from the Brooke County line to milepost 3.27,
the portion of I-70 from milepost 0.69 to 0.00 and the portion of U. S. Route 40 from milepost 0.39 to milepost 0.00 in Ohio County are designed and constructed to allow the gross weight limitation to be increased from eighty thousand pounds to ninety thousand pounds without undue damage, the commissioner may increase the weight limitations from eighty thousand pounds up to ninety thousand pounds on those sections of State Route 2, U. S. Route 40 and I-70 described above: Provided, That any person, organization or corporation exceeding eighty thousand pounds gross weight limitation while using said routes shall first obtain a multi-trip permit from the commissioner before proceeding and shall provide the commissioner with a bond sufficient to cover any potential undue damage which may result from the use: Provided, however, That if it is the determination of the commissioner that the routes, as specifically described herein, are in need of repaving, those persons, organizations or corporations shall pay the cost of repaving in amounts as assessed, from time to time, by the commissioner: Provided further, That the commissioner also determines that the increased limitation is not barred by an act of the United States Congress and the commissioner has received approval from the United States department of transportation to increase the weight limitation.

CHAPTER 288

(S. B. 667 — By Senator Helmick)

[Passed March 11, 2000; in effect from passage. Approved by the Governor.]

AN ACT to extend the time for the board of education of Pocahontas County to meet as a levying body for the purpose of presenting to the voters of the county an election to consider a special levy for
the board of education from between the seventh and twenty-eighth days of March until the twenty-second day of May, two thousand.

Be it enacted by the Legislature of West Virginia:

POCAHONTAS COUNTY BOARD OF EDUCATION MEETING AS LEVYING BODY EXTENDED.

§ 1. Extending time for Pocahontas County board of education to meet as levying body for an election for a special levy.

Notwithstanding the provisions of article eight, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, to the contrary, the board of education of Pocahontas County is hereby authorized to extend the time for its meeting as a levying body and certifying its actions to the state tax commissioner from between the seventh and twenty-eighth days of March until the twenty-second day of May, two thousand, for the purpose of submitting to the voters of Pocahontas County a special levy for the board of education.

CHAPTER 289

(Com. Sub. for H. B. 4747 — By Mr. Speaker, Mr. Kiss, and Delegates Martin and Border)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to reform, alter and modify the county commission of Wirt County under the provisions of section thirteen, article nine of the constitution of West Virginia.

Be it enacted by the Legislature of West Virginia:

WIRT COUNTY COMMISSION.
§1. Legislative findings.

The Legislature hereby finds and declares that, by a petition presented to the county commission of the county of Wirt, at least ten percent of the registered voters of said county have requested the reformation, alteration and modification of the county commission of said county, so as to replace the county commission with a new form of administration entitled the county administrators. The Legislature further finds and declares that, by a letter dated the eighteenth day of January, two thousand, said county commission has verified that the petition is proper and has requested the Legislature to so reform, alter and modify said county commission, as required by the provisions of section thirteen, article nine of the constitution of this state. The Legislature further finds and declares that it fulfills the mandatory requirements of said petition and of said section thirteen of the constitution by the provision of this act.

§2. Reformation, alteration and modification of the Wirt County commission; composition; application of laws.

That on and after the first day of January, two thousand one, a tribunal of five persons called the county administrators shall replace the previous and existing county commission in the county of Wirt, and shall have the powers, duties and responsibilities of a county commission as provided for in the constitution and general laws of this state. Notwithstanding any other provision to the contrary, any reference to a county commission or to county commissioners in the constitution or laws of this state shall be construed to include and to reference the county administrators in the county of Wirt, unless the reference conflicts with a specific provision of this act.
§3. Election of county administrators; terms of office; meetings; chief administrator; compensation; exception.

At the general election to be held in the year two thousand, there shall be elected on a nonpartisan ballot by the voters of the county of Wirt, five county administrators, no more than two to be elected from any one county district. If three or more persons residing in the same district shall receive the greatest number of votes cast at any election then only two of such persons receiving the highest number shall be declared elected, and the person living in another district, who shall receive the next highest number of votes, shall be declared elected. The county administrators shall hold office for a term of four years and may serve no more than two consecutive terms, except that at the first meeting of said county administrators elected in the year two thousand, the administrators shall designate the person receiving the highest number of votes in each of the county’s three districts and those three county administrators shall serve initial four year terms. The elected county administrator who received the next highest number of votes and the elected county administrator with the least amount of votes shall each serve an initial two year term and then may each stand for reelection to four year terms.

The county administrators shall meet at least twenty-four times annually and may call such special meetings as needed, including meetings as the board of equalization. Each county administrator shall receive one hundred dollars for each meeting attended. At the first meeting of said county administrators elected in the year two thousand, the administrators shall designate by lot, or otherwise in such manner as they may determine, one of their number who shall serve as chief administrator. The chief administrator shall serve as chairperson of the county administrators and the position shall be rotated on an annual basis.
§4. Submission to voters of question of reformation, alteration and modification of the county commission; publication.

At the primary election to be held in the year two thousand, the question of the reformation, alteration and modification of the county commission as provided in this act shall be submitted to the voters of Wirt County voting at such election, on a separate ballot furnished by the county commission, in the following form:

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For reformation of the county commission.  □

Against reformation of the county commission. □
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Notice of the election on the question shall be given by publication of this act in each weekly or daily newspaper as a Class II-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, in the county at least once in each week for two successive weeks immediately preceding the election.

§5. Effect of result of vote on modification of the county commission.

If a majority of the votes cast upon the question be for reformation of the county commission, this act shall be and remain in full force and effect; but, if a majority of said votes be against reformation of said county commission, said act shall be void and of no further force and effect.
LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST EXTRAORDINARY SESSION, 2000

CHAPTER 1

(S. B. 1002 — By Senator Craigo)

[Passed March 19, 2000; 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, two thousand, in the amount of six million dollars from the revenue shortfall reserve fund, fund 2038, organization 0201, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, two thousand, to the governor’s office, civil contingent fund, fund 0105, fiscal year 2000, organization 0100.
WHEREAS, The Legislature finds that it anticipates that the funds available to assist flood victims and to fund other needed infrastructure and other community development projects throughout the state will fall short of that needed during the fiscal year ending the thirtieth day of June, two thousand; and

WHEREAS, The revenue shortfall reserve fund has a sufficient balance available for appropriation in the fiscal year ending the thirtieth day of June, two thousand; and

WHEREAS, By the provision 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, two thousand; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the revenue shortfall reserve fund, fund 2038, organization 0201, be decreased by expiring the amount of six million dollars to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for fiscal year ending the thirtieth day of June, two thousand, to fund 0105, fiscal year 2000, organization 0100, be supplemented and amended by increasing the total appropriation by six million dollars as follows:

1 TITLE II-APPROPRIATIONS
2 Section 1. Appropriations from general revenue.
3 8-Governor's Office-
4 Civil Contingent Fund
5 (WV Code Chapter 5)
6 Fund 0105 FY 2000 Org 0100
7
8 General
9 Activity Revenue Fund
10 1a Civil Contingent Fund - Surplus (R) 263 $6,000,000
The purpose of this bill is to expire the sum of six million dollars from the revenue shortfall reserve fund, fund 2038, organization 0201, and to supplement the governor's office, civil contingent fund, fund 0105, fiscal year 2000, organization 0100, in the budget act for the fiscal year ending the thirtieth day of June, two thousand, by adding six million dollars to the appropriation for civil contingent fund-surplus.

CHAPTER 2

(S. B. 1003 — By Senator Craigo)

[Passed March 19, 2000; 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, two thousand, to the department of agriculture, fund 8736, fiscal year 2000, organization 1400, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand.

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, two thousand, 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, two thousand, to fund 8736, fiscal year 2000, organization 1400, be supplemented and amended by increasing the total appropriation by one million one hundred fifty-five thousand one hundred one dollars in the line item as follows:
TITLE II - APPROPRIATIONS.

Section 5. Appropriations of federal funds.

EXECUTIVE

236 - Department of Agriculture

(WV Code Chapter 19)

Fund 8736 FY 2000 Org 1400

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The purpose of this supplementary appropriation bill is to supplement this account in the budget act for fiscal year ending the thirtieth day of June, two thousand, by adding one million one hundred fifty-five thousand one hundred one dollars to the existing appropriation for unclassified - total for expenditure during fiscal year two thousand.

CHAPTER 3

(S. B. 1004 — By Senator Craigo)

[Passed March 19, 2000; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the balance of the West Virginia economic development authority, fund 3148, fiscal year 2000, organization 0307, for the fiscal year ending the thirtieth day of June, two thousand, in the amount of one million dollars from the unappropriated balance in the health care cost review authority fund, fund 5375, fiscal year 2000, organization 0507.
WHEREAS, The Legislature finds that the balance in the health care cost review authority fund, fund 5375, fiscal year 2000, organization 0507, exceeds that which is necessary for the purposes for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of the West Virginia economic development authority, fund 3148, fiscal year 2000, organization 0307, be increased by expiring to that fund one million dollars from the unappropriated balance of the health care cost review authority fund, fund 5375, fiscal year 2000, organization 0507, to be available for expenditure during the fiscal year two thousand.

The purpose of this bill is to expire one million dollars from the unappropriated balance in the health care cost review authority fund, fund 5375, fiscal year 2000, organization 0507, to the balance of the West Virginia economic development authority, fund 3148, fiscal year 2000, organization 0307, for the fiscal year ending the thirtieth day of June, two thousand, to be available for expenditure on emergency response equipment during the fiscal year two thousand.

CHAPTER 4

(S. B. 1005 — By Senator Craigo)

[Passed March 19, 2000; in effect from passage. Approved by the Governor.]
ated balance in the state fund, general revenue, for the fiscal year 
ending the thirtieth day of June, two thousand, to the division of 
juvenile services, fund 0570, fiscal year 2000, organization 0621.

WHEREAS, The Legislature finds that the balance in the banking 
services expense fund, fund 1322, fiscal year 2000, organization 1300, 
exceeds that which is necessary for the purposes for which the 
account was established; and

WHEREAS, By the provisions of this legislation 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, 
two thousand, therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal 
year ending the thirtieth day of June, two thousand, in the banking 
services expense fund, fund 1322, fiscal year 2000, organization 1300, 
be decreased by expiring the amount of six hundred ten thousand 
eight hundred fifty dollars to the unappropriated balance in the state 
fund, general revenue, and that the total appropriation for the fiscal 
year ending the thirtieth day of June, two thousand, to fund 0570, 
fiscal year 2000, organization 0621, be supplemented and amended by 
increasing the total appropriation by six hundred ten thousand eight 
hundred fifty dollars as follows:

1
2 TITLE II—APPROPRIATIONS.
3 Section 1. Appropriations from general revenue.
4 68—Division of Juvenile Services
5 (WV Code Chapter 49)
6 Fund 0570 FY 2000 Org 0621

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*Language deleted by the Governor.
The purpose of this bill is to expire the sum of six hundred ten thousand eight hundred fifty dollars from the banking services expense fund, fund 1322, fiscal year 2000, organization 1300, and to supplement the division of juvenile services, fund 0570, fiscal year 2000, organization 0621, in the budget act for the fiscal year ending the thirtieth day of June, two thousand by adding two hundred twenty-six thousand, five hundred twenty-nine dollars to the appropriation *in a new line item* for central office *-surplus*, and three hundred eighty-four thousand three hundred twenty-one dollars to the appropriation *in a new line item* for personal services *-surplus*, for expenditure during fiscal year ending the thirtieth day of June, two thousand.

CHAPTER 5

(S. B. 1001 — By Senator Craigo)

[Passed March 19, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing a seven hundred fifty-six dollar salary increase for members of the West Virginia state police.  

Be it enacted by the Legislature of West Virginia:  

That section five, 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.
§15-2-5. Career progression system; salaries; exclusion from wage and hour law, with supplemental payment; bond; leave time for members called to duty in guard or reserves.

(a) The superintendent shall establish within the West Virginia state police a system to provide for: The promotion of members to the supervisory ranks of sergeant, first sergeant, second lieutenant and first lieutenant; the classification of nonsupervisory members within the field operations force to the ranks of trooper, senior trooper, trooper first class or corporal; the classification of members assigned to the forensic laboratory as criminalist I-VII; and the temporary reclassification of members assigned to administrative duties as administrative support specialist I-VIII.

(b) The superintendent is authorized to propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code for the purpose of ensuring consistency, predictability and independent review of any system developed under the provisions of this section.

(c) The superintendent shall provide to each member a written manual governing any system established under the provisions of this section and specific procedures shall be identified for the evaluation and testing of members for promotion or reclassification and the subsequent placement of any members on a promotional eligibility or reclassification recommendation list.

(d) Members shall receive annual salaries as follows:

<table>
<thead>
<tr>
<th>Rank</th>
<th>Annual Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cadet During Training</td>
<td>$1,747 Mo. $20,964</td>
</tr>
<tr>
<td>Cadet Trooper After Training</td>
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<td>SALARIES</td>
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<tr>
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</tr>
<tr>
<td>28</td>
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</tr>
<tr>
<td>29</td>
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</tr>
<tr>
<td>30</td>
<td>Trooper Fourth &amp; Fifth Year</td>
</tr>
<tr>
<td>31</td>
<td>Senior Trooper</td>
</tr>
<tr>
<td>32</td>
<td>Trooper First Class</td>
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<tr>
<td>33</td>
<td>Corporal</td>
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<td>34</td>
<td>Sergeant</td>
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<td>35</td>
<td>First Sergeant</td>
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<td>36</td>
<td>Second Lieutenant</td>
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<td>39</td>
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<tr>
<td>40</td>
<td>Lieutenant Colonel</td>
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**ANNUAL SALARY SCHEDULE (BASE PAY)**

**ADMINISTRATION**

**SUPPORT SPECIALIST CLASSIFICATION**

<table>
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<tr>
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<td>49</td>
<td>VI</td>
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<td>VII</td>
<td>41,544</td>
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<tr>
<td>51</td>
<td>VIII</td>
<td>43,632</td>
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ANNUAL SALARY SCHEDULE (BASE PAY)

CRIMINALIST CLASSIFICATION

I .......................... 26,928
II .......................... 29,016
III .......................... 31,104
IV .......................... 33,192
V .......................... 37,368
VI .......................... 39,456
VII ........................ 41,544

(e) Each member of the West Virginia state police whose salary is fixed and specified pursuant to this section shall receive, and is entitled to, an increase in salary over that set forth in subsection (d) of this section, for grade in rank, based on length of service, including that service served before and after the effective date of this section with the West Virginia state police as follows: At the end of five years of service with the West Virginia state police, the member shall receive a salary increase of three hundred dollars to be effective during his or her next three years of service and a like increase at three-year intervals thereafter, with the increases to be cumulative.

(f) In applying the salary schedules set forth in this section where salary increases are provided for length of service, members of the West Virginia state police in service at the time the schedules become effective shall be given credit for prior service and shall be paid such salaries as the same length of service entitles them to receive under the provisions of this section.

(g) The Legislature finds and declares that because of the unique duties of members of the West Virginia state police, it
is not appropriate to apply the provisions of state wage and hour laws to them. Accordingly, members of the West Virginia state police are excluded from the provisions of state wage and hour law. This express exclusion shall not be construed as any indication that the members were or were not covered by the wage and hour law prior to this exclusion.

In lieu of any overtime pay they might otherwise have received under the wage and hour law, and in addition to their salaries and increases for length of service, members who have completed basic training and who are exempt from federal Fair Labor Standards Act guidelines may receive supplemental pay as provided in this section.

The superintendent shall, within thirty days after the effective date of this section, propose a legislative rule for promulgation in accordance with article three, chapter twenty-nine-a of this code, to establish the number of hours per month which constitute the standard work month for the members of the West Virginia state police. The rule shall further establish, on a graduated hourly basis, the criteria for receipt of a portion or all of supplemental payment when hours are worked in excess of the standard work month. The superintendent shall certify monthly to the West Virginia state police’s payroll officer the names of those members who have worked in excess of the standard work month and the amount of their entitlement to supplemental payment.

The supplemental payment may not exceed two hundred thirty-six dollars monthly. The superintendent and civilian employees of the West Virginia state police are not eligible for any supplemental payments.

(h) Each member of the West Virginia state police, except the superintendent and civilian employees, shall execute, before entering upon the discharge of his or her duties, a bond with security in the sum of five thousand dollars payable to the state
of West Virginia, conditioned upon the faithful performance of his or her duties, and the bond shall be approved as to form by the attorney general and as to sufficiency by the governor.

(i) Any member of the West Virginia state police who is called to perform active duty for training or inactive duty training in the national guard or any reserve component of the armed forces of the United States annually shall be granted, upon request, leave time not to exceed thirty calendar days for the purpose of performing the active duty for training or inactive duty training and the time granted may not be deducted from any leave accumulated as a member of the West Virginia state police.

(j) Beginning on the first day of July, one thousand nine hundred ninety-nine, and continuing thereafter, members shall receive annual salaries as follows:

AMENDED ANNUAL SALARY SCHEDULE (BASE PAY)

SUPERVISORY AND NONSUPERVISORY RANKS

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<thead>
<tr>
<th>Rank</th>
<th>Monthly Salary</th>
<th>Annual Salary</th>
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</thead>
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<tr>
<td>Cadet During Training</td>
<td>$1,913 Mo.</td>
<td>$22,964</td>
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<td>Cadet Trooper After Training</td>
<td>2,316 Mo.</td>
<td>27,800</td>
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<td>Trooper Second Year</td>
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<td>28,256</td>
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<tr>
<td>Trooper Third Year</td>
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<td>28,628</td>
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<tr>
<td>Trooper Fourth &amp; Fifth Year</td>
<td></td>
<td>28,928</td>
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<tr>
<td>Senior Trooper</td>
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<td>31,016</td>
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<tr>
<td>Trooper First Class</td>
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<td>33,104</td>
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<tr>
<td>Corporal</td>
<td></td>
<td>35,192</td>
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<tr>
<td>Sergeant</td>
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<td>39,368</td>
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<tr>
<td>First Sergeant</td>
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<td>41,456</td>
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<td>Salary</td>
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</tr>
<tr>
<td>First Lieutenant</td>
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<tr>
<td>Captain</td>
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<tr>
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**AMENDED ANNUAL SALARY SCHEDULE (BASE PAY)**

**SUPPORT SPECIALIST CLASSIFICATION**

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<tr>
<th>Classification</th>
<th>Salary</th>
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<tr>
<td>II</td>
<td>$31,016</td>
</tr>
<tr>
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<td>VI</td>
<td>$41,456</td>
</tr>
<tr>
<td>VII</td>
<td>$43,544</td>
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</tbody>
</table>

**CRIMINALIST CLASSIFICATION**

<table>
<thead>
<tr>
<th>Classification</th>
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<tbody>
<tr>
<td>I</td>
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<td>VII</td>
<td>$43,544</td>
</tr>
</tbody>
</table>
Each member of the West Virginia state police whose salary is fixed and specified in the amended annual salary schedules is entitled to the length of service increases set forth in subsection (f) of this section and supplemental pay as provided in subsection (g) of this section.

(k) Beginning on the first day of July, two thousand, and continuing thereafter, members shall receive annual salaries as follows:

<table>
<thead>
<tr>
<th>Rank</th>
<th>Monthly Salary</th>
<th>Annual Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cadet During Training</td>
<td>$1,976 Mo.</td>
<td>$23,720</td>
</tr>
<tr>
<td>Cadet Trooper After Training</td>
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<td>28,556</td>
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<td>Trooper Second Year</td>
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<td>29,012</td>
</tr>
<tr>
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<tr>
<td>Trooper Fourth &amp; Fifth Year</td>
<td></td>
<td>29,684</td>
</tr>
<tr>
<td>Senior Trooper</td>
<td></td>
<td>31,772</td>
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<tr>
<td>Trooper First Class</td>
<td></td>
<td>33,860</td>
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<tr>
<td>Corporal</td>
<td></td>
<td>35,948</td>
</tr>
<tr>
<td>Sergeant</td>
<td></td>
<td>40,124</td>
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<tr>
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<td>42,212</td>
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<tr>
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### AMENDED ANNUAL SALARY SCHEDULE (BASE PAY)

**ADMINISTRATION**

<table>
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<tr>
<th>Classification</th>
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</tr>
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<td>VII</td>
<td>44,300</td>
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<tr>
<td>VIII</td>
<td>46,388</td>
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</tbody>
</table>

**SUPPORT SPECIALIST CLASSIFICATION**

<table>
<thead>
<tr>
<th>Classification</th>
<th>Base Pay</th>
</tr>
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<tbody>
<tr>
<td>I</td>
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</tr>
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<td>VII</td>
<td>44,300</td>
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</table>

### AMENDED ANNUAL SALARY SCHEDULE (BASE PAY)

**CRIMINALIST CLASSIFICATION**

<table>
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<tr>
<th>Classification</th>
<th>Base Pay</th>
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</thead>
<tbody>
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<td>V</td>
<td>40,124</td>
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<tr>
<td>VI</td>
<td>42,212</td>
</tr>
<tr>
<td>VII</td>
<td>44,300</td>
</tr>
</tbody>
</table>

Each member of the West Virginia state police whose salary is fixed and specified in the amended annual salary schedules is entitled to the length of service increases set forth in subsection (f) of this section and supplemental pay as provided in subsection (g) of this section.
DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 2000

HOUSE BILLS

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<th>Bill No.</th>
<th>Chapter</th>
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### DISPOSITION OF BILLS ENACTED

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**Regular Session, 2000**

**HOUSE BILLS**

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Regular Session, 2000

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Regular Session, 2000

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