

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 2001
Second Extraordinary Session, 2000
First Extraordinary Session, 2001
Third Extraordinary Session, 2001
Fourth Extraordinary Session, 2001

Volume II
Chapters 166 — 318
Chapters 1 — 7
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**COMPILED AND PUBLISHED
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Volume II

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CHAPTER 166

**(Com. Sub. for H. B. 2216 — By Mr. Speaker, Mr. Kiss,
and Delegate Trump)
[By Request of the Executive]**

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two and three, article twenty-five-c, 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 eight new sections, designated sections four through eleven, all relating to managed care plan's benefits and responsibilities; amending statement of purpose for patients bill of rights; amending definitions; providing for notice of certain enrollee rights; prohibiting incentives or disincentives to providing care; allowing standing referrals; requiring internal grievance procedures; establishing the right to an external review of coverage denials; requiring certain enrollee benefits and services; establishing appeal process and requirements; establishing standards for external review and external review organizations; authorizing insurance commissioner to promulgate rules; providing civil liability for failure of managed care plan to comply with external review decisions; creating internal effective date; and providing rules of construction of this article.

Be it enacted by the Legislature of West Virginia:

That sections one, two and three, article twenty-five-c, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said

article be further amended by adding thereto eight new sections, designated sections four through eleven, all to read as follows:

**ARTICLE 25C. HEALTH MAINTENANCE ORGANIZATION PATIENT
BILL OF RIGHTS.**

§33-25C-1. Short title and purpose.

§33-25C-2. Definitions.

§33-25C-3. Notice of certain enrollee rights.

§33-25C-4. Access to appropriate health services.

§33-25C-5. Enrollee complaints; internal grievance procedure.

§33-25C-6. External review of health care disputes.

§33-25C-7. Managed care plan liability.

§33-25C-8. Delegation of duties.

§33-25C-9. Rules.

§33-25C-10. Construction.

§33-25C-11. Effective date.

§33-25C-1. Short title and purpose.

1 This article may be referred to as the “Patients’ Bill of
2 Rights.” It is the intent of the Legislature that enrollees covered
3 by health care plans receive quality, cost-effective health care
4 designed to maintain and improve their health. The purpose of
5 this article is to ensure that health plan enrollees:

6 (a) Have improved access to information regarding their
7 health plans;

8 (b) Have sufficient and timely access to appropriate health
9 care services, and choice among health care providers;

10 (c) Are assured that health care decisions are made by
11 appropriate medical personnel;

12 (d) Have access to a quick and impartial process for
13 appealing plan decisions;

14 (e) Are protected from unnecessary invasions of health care
15 privacy; and

16 (f) Are assured that personal health care information will be
17 used only as necessary to obtain and pay for health care or to
18 improve the quality of care.

§33-25C-2. Definitions.

1 For purposes of this article:

2 (a) “Commissioner” means the commissioner of insurance.

3 (b) “Credentials” means medical training, education,
4 specialties, and board certifications of the provider.

5 (c) “Enrollee” is a natural person who has entered into an
6 agreement with a health maintenance organization or prepaid
7 limited health service organization for the provision of man-
8 aged health care.

9 (d) “External review” means a process, independent of all
10 affected parties, to determine if a health care service is medi-
11 cally necessary, or experimental.

12 (e) “Health care plan” means a plan that establishes,
13 operates, or maintains a network of health care providers that
14 have entered into agreements with the plan to provide health
15 care services to enrollees to whom the plan has the ultimate
16 obligation to arrange for the provision of or payment for
17 services through organizational arrangements for ongoing
18 quality assurance, utilization review programs, or dispute
19 resolution.

20 For purposes of this definition, “health care plan” shall not
21 include indemnity health insurance policies including those
22 using a contracted provider network;

23 (f) “Managed care plan” or “plan” means any health
24 maintenance organization or prepaid limited health service

25 organization: *Provided*, That this article only applies to prepaid
26 limited health service organizations to the extent of coverage
27 and services these organizations offer;

28 (g) "Provider" means any physician, hospital or other
29 person or organization which is licensed or otherwise autho-
30 rized in this state to provide health care services or supplies.

§33-25C-3. Notice of certain enrollee rights.

1 All managed care plans must on or after the first day of
2 July, two thousand two, provide to enrollees a notice of certain
3 enrollee rights. The notice shall be provided to enrollees on a
4 yearly basis on a form prescribed by the commissioner and shall
5 include, but not be limited to:

6 (a) The enrollee's rights to a description of his or her rights
7 and responsibilities, plan benefits, benefit limitations, premi-
8 ums, and individual cost-sharing requirements;

9 (b) The enrollee's right to a description of the plan's
10 grievance procedure and the right to pursue grievance and
11 hearing procedures without reprisal from the managed care
12 plan;

13 (c) A description of the method in which an enrollee can
14 obtain a listing of the plan's provider network, including the
15 names and credentials of all participating providers, and the
16 method in which an enrollee may choose providers within the
17 plan;

18 (d) The enrollee's right to privacy and confidentiality;

19 (e) The right to full disclosure from the enrollee's health
20 care provider of any information relating to his or her medical
21 condition or treatment plan, and the ability to examine and offer
22 corrections to the enrollee's medical records;

23 (f) The enrollee's right to be informed of plan policies and
24 any charges for which the enrollee will be responsible;

25 (g) The right of enrollees to have coverage denials involv-
26 ing medical necessity or experimental treatment reviewed by
27 appropriate medical professionals who are knowledgeable about
28 the recommended or requested health service, as part of an
29 external review as provided in this article;

30 (h) A description of the method in which an enrollee can
31 obtain access to a summary of the plan's accreditation report;

32 (i) The right of an enrollee to have medical advice or
33 options communicated to him or her without any limitations or
34 restrictions being placed upon the provider or primary care
35 physician by the managed care plan;

36 (j) A list of all other legally mandated benefits to which the
37 enrollee is entitled, including coverage for services provided
38 pursuant to sections eight-a, eight-b, eight-c, eight-d, eight-e,
39 article twenty-five-a of this chapter, article twenty-five-e of this
40 chapter, and article forty-two of this chapter, and all rules
41 promulgated pursuant to this chapter regulating managed care
42 plans.

43 (k) Any other areas the commissioner may propose in
44 accordance with section nine of this article.

§33-25C-4. Access to appropriate health services.

1 (a) Each managed care plan must allow an enrollee to
2 choose a primary care provider who is accepting new enrollees
3 from a list of participating providers. Enrollees also must be
4 permitted to change primary care providers after six months
5 with the change becoming effective no later than the beginning
6 of the month next following the enrollee's request for the
7 change.

8 (b) The enrollee's managed care plan may not provide to
9 any provider or any primary care physician an incentive or
10 disincentive plan that includes specific payment made directly
11 or indirectly, in any form, to the provider or primary care
12 physician as an inducement to deny, release, limit, or delay
13 specific, medically necessary and appropriate services provided
14 with respect to a specific enrollee or groups of enrollees with
15 similar medical conditions.

16 (c) A managed care plan shall have a procedure by which
17 an enrollee, upon diagnosis with a life-threatening, degenerative
18 or disabling condition or disease, either of which requires
19 specialized health care over a prolonged period of time, may
20 receive a standing referral to a specialist with expertise in that
21 condition or disease who will be responsible for and capable of
22 providing and coordinating the member's specialty care. When
23 a standing referral is made, the managed care plan shall
24 periodically review the referral for continued necessity.

25 (d) Each managed care plan must provide for appropriate
26 and timely referral of enrollees to a choice of specialists within
27 the plan if specialty care is warranted. The referral shall be first
28 to a specialist located in the geographic area of the plan in
29 which the enrollee resides and if an appropriate specialist is not
30 available in the area, then to a specialist located elsewhere
31 within the plan. If the type of medical specialist who is appro-
32 priate for a specific condition is not represented on the specialty
33 panel, enrollees must have access to nonparticipating specialty
34 health care providers in a manner consistent with their managed
35 care contract.

36 (e) Each managed care plan must, upon the request of an
37 enrollee, provide access by the enrollee to a second opinion
38 regarding a diagnosis or treatment plan requiring a serious or
39 complex procedure, from a qualified participating provider.

40 (f) Each managed care plan must, at the option of the
41 enrollee, continue to cover services of a primary care provider
42 whose contract with the plan or whose contract with a subcon-
43 tractor is being terminated by the plan or subcontractor without
44 cause under the terms of that contract for at least sixty days
45 following notice of termination to the enrollees. The plan's
46 obligation to continue to cover the primary care physician's
47 services is contingent upon the primary care physician's
48 acceptance and compliance with the same terms and conditions
49 as those of the contract the plan or subcontractor is terminating,
50 except for any provision requiring that the managed care plan
51 assign new enrollees to the terminated provider.

§33-25C-5. Enrollee complaints; internal grievance procedure.

1 (a) Each managed care plan must establish and maintain an
2 internal grievance procedure for the fair consideration of
3 disputes relating to any provisions of the plan's contract,
4 including, but not limited to, claims regarding the scope of
5 coverage for health care services; denials, cancellations or
6 nonrenewals of enrollee coverage; observance of an enrollee's
7 rights as a patient; the quality of health care services; or
8 decisions by managed care plans to deny, modify, reduce, or
9 terminate coverage of or payment for health care services for an
10 enrollee, as more specifically set forth in section twelve, article
11 twenty-five-a, chapter thirty-three of this code.

12 (b) Except for determinations of whether a health care
13 service is medically necessary, or determinations of whether a
14 health care service is experimental, an enrollee may appeal the
15 final decision resulting from the internal grievance procedure
16 to the insurance commissioner, as set forth in section twelve,
17 article twenty-five-a, chapter thirty-three of this code.

18 (c) Any party aggrieved by an order of the insurance
19 commissioner may appeal to the circuit court of Kanawha

20 County, as set forth in section fourteen, article two, chapter
21 thirty-three. The judgment of the circuit court may be reviewed
22 upon appeal by the supreme court of appeals in the same
23 manner as other civil cases to which the state is a party.

§33-25C-6. External review of health care disputes.

1 (a) For determinations of whether a health care service is
2 medically necessary, or determinations of whether a health care
3 service is experimental, an enrollee may seek review by a
4 certified external review organization of a managed care plan's
5 decision to deny, modify, reduce, or terminate coverage of or
6 payment for a health care service, after exhausting the managed
7 care plan's internal grievance process and receiving a decision
8 that is unfavorable to the enrollee, or after the managed care
9 plan has exceeded the time periods for grievances provided in
10 section twelve, article twenty-five-a of this chapter, without
11 good cause and without reaching a decision.

12 (b) A request for external review must be made in writing
13 to the managed care plan and the insurance commissioner,
14 within sixty days after the managed care plan has exceeded the
15 time periods for grievances without reaching a decision, as set
16 forth in subsection (a) of this section, or within sixty days after
17 receiving an unfavorable decision by the managed care plan.

18 (c) External reviews may be requested by enrollees where
19 the denial, reduction, modification or termination of payment
20 for health care services for an enrollee would result in payment
21 of at least one thousand dollars or a course of health care
22 services that would exceed one thousand dollars by the enrollee
23 if the health care were paid for by the enrollee.

24 (d) In an external review, the external review organization
25 must consider, at a minimum, the information submitted by the
26 managed care plan, the enrollee and the enrollee's provider,
27 including the enrollee's medical records; the terms and condi-

28 tions of the plan; and the standards, criteria and clinical
29 rationale used by the managed care plan to reach its decision.

30 (e) External reviews relate only to questions of whether a
31 health care service is medically necessary or whether a health
32 care service is experimental. The cost of external reviews shall
33 be borne by the managed care plan.

34 (f) Determinations of whether a health care service is
35 medically necessary will be made by an external review
36 organization through use of at least one physician, or other
37 provider appropriate to the health care service under consider-
38 ation, who is knowledgeable about the recommended or
39 requested health service.

40 (g) Determinations of whether a health care service is
41 experimental will be made by an external review organization
42 through use of a panel of at least three physicians, or other
43 providers appropriate to the health care service under consider-
44 ation, who are knowledgeable about the recommended or
45 requested health service.

46 (h) External reviews which relate to both a determination of
47 whether a health care service is medically necessary and a
48 determination of whether a health care service is experimental
49 will be conducted by a panel of at least three physicians, or
50 other providers appropriate to the health care service under
51 consideration, who are knowledgeable about the recommended
52 or requested health service.

53 (i) Questions of coverage of health care services which do
54 not include determinations of whether a health care service is
55 medically necessary or whether a health care service is experi-
56 mental will be confined to the internal grievance procedure as
57 referenced in section five of this article and set forth in section
58 twelve, article twenty-five-a of this chapter, and in the rules of
59 the insurance commissioner.

60 (j) Failure of the managed care plan to make all reasonable
61 efforts to provide medical and other relevant records to the
62 external review organization within the time frames set by the
63 commissioner will result in a determination in the external
64 review adverse to the managed care plan, in which event the
65 managed care plan must provide coverage for the requested or
66 proposed health care services.

67 (k) Failure of the enrollee to provide medical and other
68 relevant records to the external review organization within the
69 time frames established by the commissioner will result in the
70 external review proceeding to decision without consideration of
71 the records in the possession or control of the enrollee.

72 (l) Upon written request, the commissioner may grant
73 additional time, for good cause shown, in which a party may
74 forward records to the external review organization if the party
75 has made a timely request to the provider to forward the
76 records, and the provider has failed to forward the records as
77 requested. If the external review is an expedited review, the
78 commissioner must consider the possible adverse health
79 consequences to the enrollee in determining whether to permit
80 additional time to comply.

81 (m) Either the managed care plan or the enrollee may
82 request that the commissioner issue subpoenas to providers for
83 the enrollee's medical or other relevant records.

84 (n) Upon an enrollee's request, an expedited external
85 review shall be provided within a period of seven days in
86 circumstances where failure of the enrollee to immediately
87 receive the requested or proposed health care service could
88 result in placing the health of the enrollee or the health of
89 enrollee's unborn child in serious jeopardy, cause serious
90 impairment to bodily functions, or serious dysfunction of any
91 bodily organ or part. The commissioner may, by rule, shorten
92 the seven-day time frame.

93 (o) The commissioner shall propose rules in accordance
94 with section nine of this article which establish procedures for
95 external reviews under this article and certification of external
96 review organizations. In development of these rules, the
97 commissioner shall consider the latest version of the national
98 association of insurance commissioners health carrier external
99 review model act. These rules shall provide:

100 (1) The maximum rates and maximum amounts which
101 external review organizations may charge for external reviews;

102 (2) Procedures for the fair and efficient selection of and
103 assignment of external review organizations to external reviews
104 as they are requested;

105 (3) Procedures and specific time constraints for the provi-
106 sion of the enrollee's medical and other relevant records to the
107 external review organization upon the occurrence of an external
108 review;

109 (4) Specified time frames within which the managed care
110 plan and the enrollee must provide all medical and similar
111 records to the external review organization;

112 (5) Provisions for the confidentiality of enrollee medical
113 records;

114 (6) Procedures and standards to insure that external review
115 organizations are properly qualified and approved by the
116 commissioner to perform external reviews; and

117 (7) Procedures for fair notice to the enrollee and the
118 managed care plan of decisions or other important steps in the
119 external review process.

120 (p) Upon written application to and approval by the
121 commissioner, a managed care plan may be exempted from the

122 requirements for external review as specified in this section
123 upon a showing that:

124 (1) The managed care plan has an established external
125 review procedure in place;

126 (2) The managed care plan has been reviewed by and
127 maintains a current full accreditation from a nationally recog-
128 nized accreditation and review organization approved by the
129 commissioner, in accordance with section seventeen-a, article
130 twenty-five-a of this chapter; and

131 (3) As part of the accreditation process the accreditation
132 and review organization reviewed and approved the managed
133 care plan's external review process.

§33-25C-7. Managed care plan liability.

1 (a) After settlement or exhaustion of all legal appeals
2 involving determinations of whether health care services are
3 medically necessary or experimental, a managed care plan must
4 comply with the decision rendered in an external review under
5 this article and may be held civilly liable for all damages
6 proximately caused to an enrollee for its failure to so comply.

7 (b) A managed care plan may not enter into a contract with
8 a physician, hospital, or other health care provider or pharma-
9 ceutical company which includes an indemnification or hold
10 harmless clause for the acts or conduct of the managed care
11 plan addressed by this section. Any indemnification of a hold
12 harmless clause in an existing contract is hereby declared void.

13 (c) It is a defense to any action or liability asserted under
14 this section against a managed care plan that:

15 (1) The coverage for the health care service in question was
16 provided under the plan and in compliance with the external
17 review decision; or

18 (2) Neither the managed care plan, nor any employee,
19 agent, or ostensible agent for the managed care plan controlled,
20 influenced, or participated in the health care decision.

21 (d) This section does not create any liability on the part of
22 an employer, government agency, or an employer group
23 purchasing organization that purchases coverage or assumes
24 risk on behalf of its employers, or employees, or a governmen-
25 tal agency that purchases coverage on behalf of individuals and
26 families.

27 (e) A person may not maintain a cause of action under this
28 section against a managed care plan unless:

29 (1) The affected enrollee or the enrollee's representative
30 has exercised the opportunity established in section five of this
31 article and further established by legislative rule to seek
32 external review of the health care treatment decision;

33 (2) The determination of the external review association
34 was in favor of the enrollee; and

35 (3) The managed care plan has not complied with the
36 external review association's decision.

37 (f) Any action under this section shall be commenced
38 within two years of the completion of the external review
39 process: *Provided*, That a minor or persons under legal disabil-
40 ity may commence action within the time period prescribed in
41 section fifteen, article two, chapter fifty-five of this code.

42 (g) This section does not create any new cause of action, or
43 eliminate any presently existing cause of action.

44 (h) This section does not apply to workers' compensation
45 insurance under article two, chapter twenty-three of the code.

§33-25C-8. Delegation of duties.

1 Each managed care plan is accountable for and must
2 oversee any activities required by this article that it delegates to
3 any subcontractor. No contract with a subcontractor executed
4 by the managed care plan or the subcontractor may relieve the
5 managed care plan of its obligations to any enrollee for the
6 provision of health care services or of its responsibility for
7 compliance with statutes or rules.

§33-25C-9. Rules.

1 The commissioner may propose rules for legislative
2 approval to be effective by the first day of July, two thousand
3 two, and in accordance with the provisions of article three,
4 chapter twenty-nine-a of this code:

5 (a) To establish further standards for external review
6 procedures to be implemented by managed care plans;

7 (b) To establish further standards for certification of
8 independent review organizations; and

9 (c) To further effectuate the purposes of this article.

§33-25C-10. Construction.

1 To the extent permitted by law, if any provision of this
2 article conflict with other state or federal law, then the provi-
3 sion must be construed in a manner most favorable to the
4 enrollee.

§33-25C-11. Effective date.

1 The enrollee's right to an external review by an external
2 review organization certified and selected by the commissioner
3 and the liability provisions contained in subsection (a) of
4 section seven of this article will be effective the first day of
5 July, two thousand two.

CHAPTER 167

(S. B. 508 — By Senator Minard)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article twenty-seven, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the confidential treatment of materials filed in accordance with the “Model Insurance Holding Company Systems Act”.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 27. INSURANCE HOLDING COMPANY SYSTEMS.

§33-27-7. Confidential treatment.

1 All information, documents and copies thereof obtained by
2 or disclosed to the commissioner or any other person in the
3 course of an examination or investigation made pursuant to
4 section six of this article and all information reported pursuant
5 to sections four and five of this article, shall be given confiden-
6 tial treatment and are not subject to subpoena and may not be
7 made public by the commissioner or any other person, except
8 to insurance departments of other states, without the prior
9 written consent of the insurer to which it pertains unless the
10 commissioner, after giving the insurer and its affiliates who
11 would be affected thereby, notice and opportunity to be heard,

12 determines that the interests of policyholders, shareholders or
13 the public will be served by the publication thereof, in which
14 event he or she may publish all or any part thereof in such
15 manner as he or she may consider appropriate.

CHAPTER 168

(S. B. 503 — By Senator Minard)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, four, five, seven and eleven, article thirty-three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to codification of statutory accounting principles to be used in the annual audited financial reports of insurers; and addressing the commissioner's approval of combined or consolidated financial statements.

Be it enacted by the Legislature of West Virginia:

That sections one, two, four, five, seven and eleven, article thirty-three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 33. ANNUAL AUDITED FINANCIAL REPORT.

§33-33-1. Declaration of policy and purpose.

§33-33-2. Definitions.

§33-33-4. Contents of annual audited financial report.

§33-33-5. Designation of independent certified public accountant.

§33-33-7. Consolidated or combined audits.

§33-33-11. Definition, availability and maintenance of certified public accountant (CPA) workpapers.

§33-33-1. Declaration of policy and purpose.

1 (a) The purpose of this article is to improve the insurance
2 commissioner's surveillance of the financial condition of
3 insurers by requiring an annual examination by independent
4 certified public accountants of the financial statements report-
5 ing the financial condition and the results of operations of
6 insurers.

7 (b) Foreign or alien insurers filing audited financial reports
8 in another state, pursuant to the other state's requirement of
9 audited financial reports which has been found by the commis-
10 sioner to be substantially similar to the requirements herein, are
11 exempt from this article if:

12 (1) A copy of the audited financial report, report on
13 significant deficiencies in internal controls and the accountant's
14 letter of qualifications which are filed with the other state are
15 filed with the commissioner in accordance with the filing dates
16 specified in sections three, ten and ten-a of this article, respec-
17 tively. Canadian insurers may submit accountants' reports as
18 filed with the Canadian dominion department of insurance.

19 (2) A copy of any notification of adverse financial condi-
20 tion report filed with the other state is filed with the commis-
21 sioner within the time specified in section nine of this article.

22 (c) This article shall not prohibit or preclude or in any way
23 limit the commissioner from performing examinations of
24 insurers as specified in section nine, article two of this chapter
25 or any other examinations as the commissioner may be autho-
26 rized by this chapter to perform.

§33-33-2. Definitions.

1 (a) "Accountant" and "independent certified public
2 accountant" means an independent certified public accountant
3 or accounting firm in good standing with the American institute
4 of certified public accountants and in all states in which the
5 accountant is licensed to practice; for Canadian and British
6 companies, the terms mean a Canadian-chartered or Brit-
7 ish-chartered accountant.

8 (b) "Annual statement" means the annual financial state-
9 ment required to be filed by insurers with the commissioner
10 pursuant to the provisions of this chapter.

11 (c) "Audited financial report" means and includes those
12 items specified in section four of this article.

13 (d) "Insurer" for purposes of this article means any domes-
14 tic insurer as defined in section six, article one of this chapter
15 and includes any domestic stock insurance company, mutual
16 insurance company, reciprocal insurance company, farmers'
17 mutual fire insurance company, fraternal benefit society,
18 hospital service corporation, medical service corporation, health
19 care corporation, health maintenance organization, captive
20 insurance company or risk retention group and any licensed
21 foreign or alien insurer defined in article one of this chapter.

22 (e) "Workpapers" means and includes audit planning
23 documentation, work programs, analyses, memoranda, letters
24 of confirmation and representation, abstracts of company
25 documents and schedules or commentaries prepared or obtained
26 by the independent certified public accountant in the course of
27 the examination of the financial statements of an insurer and
28 which support the opinion thereon.

§33-33-4. Contents of annual audited financial report.

1 (a) The annual audited financial report shall report the
2 financial condition of the insurer as of the end of the most

3 recent calendar year and the results of its operations, cash flows
4 and changes in capital and surplus for the year then ended in
5 conformity with statutory accounting practices for preparation
6 of the annual statement or as otherwise permitted by the
7 commissioner.

8 (b) The annual audited financial report shall include the
9 following:

10 (1) Report of independent certified public accountant;

11 (2) Balance sheet reporting admitted assets, liabilities,
12 capital and surplus;

13 (3) Statement of gain or loss from operations or statement
14 of revenue and expenses;

15 (4) Statement of cash flows statement;

16 (5) Statement of changes in capital and surplus;

17 (6) Notes to financial statements. These notes shall be those
18 required by the appropriate national association of insurance
19 commissioners annual statement instructions and accounting
20 practices and procedures manual, as amended, including
21 reconciliation differences, if any, between the audited statutory
22 financial statements and the annual statement with a written
23 description of the nature of these differences.

24 (7) The financial statements included in the audited
25 financial report shall be prepared in a form and using language
26 and groupings substantially the same as the relevant sections of
27 the annual statement of the insurer filed with the commissioner;
28 and:

29 (A) The financial statement shall be comparative, present-
30 ing the amounts as of the thirty-first day of December of the

31 current year and the amounts as of the immediately preceding
32 thirty-first day of December: *Provided*, That in the first year in
33 which an insurer is required to file an audited financial report,
34 the comparative data may be omitted.

35 (B) Amounts may be rounded to the nearest thousand
36 dollars;

37 (8) Supplementary data and information. This shall include
38 any additional clarifying information or data which the com-
39 missioner may require to be disclosed.

§33-33-5. Designation of independent certified public accountant.

1 (a) Each insurer required by this article to file an annual
2 audited financial report must, within sixty days after becoming
3 subject to the requirements, register with the commissioner in
4 writing the name and address of the accountant retained to
5 conduct the annual audit set forth in this article.

6 (b) The insurer shall obtain a letter from the accountant, and
7 file a copy with the commissioner stating that the accountant is
8 aware of the provisions of this code and rules that relate to
9 accounting and financial matters and affirming that he or she
10 will express his or her opinion on the financial statements in
11 terms of their conformity to the statutory accounting practices
12 prescribed or otherwise permitted by the commissioner specify-
13 ing any exceptions as he or she may believe appropriate.

14 (c) If an accountant who was not the accountant for the
15 immediately preceding filed audited financial report is engaged
16 to audit the insurer's financial statements, the insurer shall
17 within thirty days of the date the accountant is engaged notify
18 the commissioner of this event.

19 (d) If an accountant who was the accountant for the
20 immediately preceding filed audited financial report is dis-

21 missed or resigns, the insurer shall within five business days
22 notify the commissioner of this event. The insurer shall also
23 furnish the commissioner with a separate letter within ten
24 business days of the above notification stating whether in the
25 twenty-four months preceding the notification there were any
26 disagreements with the former accountant on any matter of
27 accounting principles or practices, financial statement disclo-
28 sure or auditing scope or procedure, which disagreements, if not
29 resolved to the satisfaction of the former accountant, would
30 have caused him or her to make reference to the subject matter
31 of the disagreement in connection with his or her opinion. The
32 disagreements required to be reported in response to this section
33 include both those resolved to the former accountant's satisfac-
34 tion and those not resolved to the former accountant's satisfac-
35 tion. Disagreements contemplated by this section are those that
36 occur at the decision-making level between personnel of the
37 insurer responsible for presentation of its financial statements
38 and personnel of the accounting firm responsible for rendering
39 its report. The insurer shall also in writing request the former
40 accountant to furnish it a letter addressed to the insurer stating
41 whether the accountant agrees with the statements contained in
42 the insurer's letter and, if not, stating the reasons for which he
43 or she does not agree; and the insurer shall furnish the respon-
44 sive letter from the former accountant to the commissioner
45 together with its own.

§33-33-7. Consolidated or combined audits.

1 An insurer may make written application to the commis-
2 sioner for approval to file audited consolidated or combined
3 financial statements in lieu of separate annual audited financial
4 statements if the insurer is part of a group of insurance compa-
5 nies which utilizes a pooling or one hundred percent reinsur-
6 ance agreement that affects the solvency and integrity of the
7 insurer's reserves and the insurer cedes all of its direct and
8 assumed business to the pool. If an approval is granted, a

9 columnar consolidating or combining worksheet shall be filed
10 with the report incorporating the following:

11 (1) Amounts shown on the consolidated or combined
12 audited financial report shall be shown on the worksheet;

13 (2) Amounts for each insurer subject to this section shall be
14 stated separately;

15 (3) Noninsurance operations may be shown on the
16 worksheet on a combined or individual basis;

17 (4) Explanations of consolidating and eliminating entries
18 shall be included; and

19 (5) A reconciliation shall be included of any differences
20 between the amounts shown in the individual insurer columns
21 of the worksheet and comparable amounts shown on the annual
22 statements of the insurers.

**§33-33-11. Definition, availability and maintenance of certified
public accountant (CPA) workpapers.**

1 (a) Workpapers shall be kept by the independent certified
2 public accountant of the procedures followed, the tests per-
3 formed, the information obtained and the conclusions reached
4 pertinent to the examination of the financial statements of an
5 insurer.

6 (b) Every insurer required to file an audited financial report
7 pursuant to this article shall require the accountant to make
8 available for review by the commissioner the workpapers
9 prepared in the conduct of the examination. The insurer shall
10 require that the accountant retain the audit workpapers and any
11 communications related to the audit between the accountant and
12 the insurer, at the offices of the insurer, at the insurance
13 department or at any other reasonable place designated by the
14 commissioner. The insurer shall require that the accountant
15 retain the audit workpapers and communications until the

16 commissioner has filed a report of examination, as required by
17 section nine, article two of this chapter, covering the period of
18 the audit but no longer than seven years from the date of the
19 audit report.

20 (c) In the conduct of the aforementioned periodic review by
21 the commissioner, it shall be agreed that copies of pertinent
22 audit workpapers may be made and retained by the commis-
23 sioner. Reviews by the commissioner shall be considered
24 investigations and all workpapers and communications obtained
25 during the course of any investigations shall be afforded the
26 same confidentiality as other examination workpapers gener-
27 ated by the commissioner.

CHAPTER 169

**(Com. Sub. for H. B. 2486 — By Mr. Speaker, Mr. Kiss, and Delegates
Angotti, Amores, Beane, Cann and R. M. Thompson)**

[Passed April 14, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article forty-five, all relating to establishing claim settlement practices for insurers providing certain health insurance coverages; defining terms; establishing procedures and criteria for payment of claims by insurers; excepting certain providers and other entities from this article; providing procedures to review and appeal claims; requiring interest paid for failure to pay certain claims; requiring certain information be provided to insurer and providers to verify claims; providing timely payment of certain claims; requiring notice of failure to pay claim; providing procedures for retroactive approval

and denial of claims; establishing requirements for payment of certain providers; prohibiting penalizing a provider who invokes the rights under this article; authorizing legislative rulemaking authority to the insurance commissioner; and providing that the insurance commissioner may not adjudicate claims made pursuant to this article.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 45. ETHICS AND FAIRNESS IN INSURER BUSINESS PRACTICES.

§33-45-1. Definitions.

§33-45-2. Minimum fair business standards contract provisions required; processing and payment of health care services; provider claims; commissioner's jurisdiction.

§33-45-3. Damages, attorney fees and costs available to providers upon insurer's violation of article or breach of contract provisions.

§33-45-4. Providers invoking rights protected.

§33-45-5. Commissioner authorized to propose rules.

§33-45-6. Commissioner's authority.

§33-45-7. Contractual alternative reimbursement arrangements.

§33-45-8. Exemptions.

§33-45-1. Definitions.

1 As used in this article:

2 (1) "Claim" means each individual request for reimburse-
3 ment or proof of loss made by or on behalf of an insured or a
4 provider to an insurer, or its intermediary, administrator or
5 representative, with which the provider has a provider contract
6 for payment for health care services under any health plan.

7 (2) “Clean claim” means a claim: (A) That has no material
8 defect or impropriety, including all reasonably required
9 information and substantiating documentation, to determine
10 eligibility or to adjudicate the claim; or (B) with respect to
11 which an insurer has failed timely to notify the person submit-
12 ting the claim of any such defect or impropriety in accordance
13 with section two of this article.

14 (3) “Commissioner” means the insurance commissioner of
15 West Virginia.

16 (4) “Health care services” means items or services fur-
17 nished to any individual for the purpose of preventing, alleviat-
18 ing, curing, or healing human illness, injury or physical or
19 mental disability.

20 (5) “Health plan” means any individual or group health care
21 plan, subscription contract, evidence of coverage, certificate,
22 health services plan; medical or hospital services plan as
23 defined in article twenty-four of this chapter; accident and
24 sickness insurance policy or certificate; managed care health
25 insurance plan, or health maintenance organization subject to
26 state regulation pursuant to article twenty-five-a of this chapter;
27 which is offered, arranged, issued or administered in the state
28 by an insurer authorized under this chapter, a third-party
29 administrator or an intermediary. Health plan does not mean:
30 (A) Coverages issued pursuant to Title XVIII of the Social
31 Security Act, 42 U.S.C. §1395 et seq. (Medicare), Title XIX of
32 the Social Security Act, 42 U.S.C. §1396 et seq. or Title XX of
33 the Social Security Act, 42 U.S.C. §1397 et seq. (Medicaid), 5
34 U.S.C. §8901 et seq., or 10 U.S.C. §1071 et seq. (CHAMPUS);
35 article sixteen, chapter five of this code (PEIA); (B) accident
36 only, credit or disability insurance, long-term care insurance,
37 CHAMPUS supplement, Medicare supplement, workers’
38 compensation coverages or limited benefits policy as defined in
39 article sixteen-e of this chapter; or (C) any a third-party

40 administrator or an intermediary acting on behalf of providers
41 as denoted in subparagraphs (A) and (B).

42 (6) "Insured" means a person who is provided health
43 insurance coverage or other health care services coverage from
44 an insurer under a health plan.

45 (7) "Insurer" means any person required to be licensed
46 under this chapter which offers or administers as a third party
47 administrator health insurance; operates a health plan subject to
48 this chapter; or provides or arranges for the provision of health
49 care services through networks or provider panels which are
50 subject to regulation as the business of insurance under this
51 chapter. "Insurer" also includes intermediaries. "Insurer" does
52 not include:

53 (A) Credit accident and sickness insurance;

54 (B) Accident and sickness policies which provide benefits
55 for loss of income due to disability;

56 (C) Any policy of liability of workers' compensation
57 insurance;

58 (D) Hospital indemnity or other fixed indemnity insurance;

59 (E) Life insurance, including endowment or annuity
60 contracts, or contracts supplemental thereto, which contain only
61 provisions relating to accident and sickness insurance that: (i)
62 Provide additional benefits in cases of death by accidental
63 means; or (ii) operate to safeguard the contracts against lapse,
64 in the event that the insured shall become totally and perma-
65 nently disabled as defined by the contract or supplemental
66 contract; and

67 (F) Property and casualty insurance.

68 (8) "Provider contract" means any contract between a
69 provider and (A) an insurer; (B) a health plan; or (C) an
70 intermediary, relating to the provision of health care services.

71 (9) "Retroactive denial" means the practice of denying
72 previously paid claims by withholding or setting off against
73 payments, or in any other manner reducing or affecting the
74 future claim payments to the provider, or to seek direct cash
75 reimbursement from a provider for a payment previously made
76 to the provider.

77 (10) "Provider" means a person or other entity which holds
78 a valid license to provide specific health care services in this
79 state.

80 (11) "Intermediary" means a physician, hospital, physician-
81 hospital organization, independent provider organization or
82 independent provider network which receives compensation for
83 arranging one or more health care services to be rendered by
84 providers to insureds of a health plan or insurer. An intermedi-
85 ary does not include an individual provider or group practice
86 that utilizes only its employees, partners or shareholders and
87 their professional licenses to render services.

**§33-45-2. Minimum fair business standards contract provisions
required; processing and payment of health care
services; provider claims; commissioner's juris-
diction.**

1 (a) Every provider contract entered into, amended, extended
2 or renewed by an insurer on or after the first day of August, two
3 thousand one, shall contain specific provisions which shall
4 require the insurer to adhere to and comply with the following
5 minimum fair business standards in the processing and payment
6 of claims for health care services:

7 (1) An insurer shall either pay or deny a clean claim within
8 forty days of receipt of the claim if submitted manually and
9 within thirty days of receipt of the claim if submitted electroni-
10 cally, except in the following circumstances:

11 (A) Another payor or party is responsible for the claim;

12 (B) The insurer is coordinating benefits with another payor;

13 (C) The provider has already been paid for the claim;

14 (D) The claim was submitted fraudulently; or

15 (E) There was a material misrepresentation in the claim.

16 (2) Each insurer shall maintain a written or electronic
17 record of the date of receipt of a claim. The person submitting
18 the claim shall be entitled to inspect the record on request and
19 to rely on that record or on any other relevant evidence as proof
20 of the fact of receipt of the claim. If an insurer fails to maintain
21 an electronic or written record of the date a claim is received,
22 the claim shall be considered received three business days after
23 the claim was submitted based upon the written or electronic
24 record of the date of submittal by the person submitting the
25 claim.

26 (3) An insurer shall, within thirty days after receipt of a
27 claim, request electronically or in writing from the person
28 submitting the claim any information or documentation that the
29 insurer reasonably believes will be required to process and pay
30 the claim or to determine if the claim is a clean claim. The
31 insurer shall use all reasonable efforts to ask for all desired
32 information in one request, and shall if necessary, within fifteen
33 days of the receipt of the information from the first request,
34 only request or require additional information one additional
35 time if such additional information could not have been
36 reasonably identified at the time of the original request or to

37 specifically identify a material failure to provide the informa-
38 tion requested in the initial request. Upon receipt of the
39 information requested under this subsection which the insurer
40 reasonably believes will be required to adjudicate the claim or
41 to determine if the claim is a clean claim, an insurer shall either
42 pay or deny the claim within thirty days. No insurer may refuse
43 to pay a claim for health care services rendered pursuant to a
44 provider contract which are covered benefits if the insurer fails
45 to timely notify the person submitting the claim within thirty
46 days of receipt of the claim of the additional information
47 requested unless such failure was caused in material part by the
48 person submitting the claims: *Provided*, That nothing herein
49 shall preclude such an insurer from imposing a retroactive
50 denial of payment of such a claim if permitted by the provider
51 contract unless such retroactive denial of payment of the claim
52 would violate subdivision (7), subsection (a) of this section.
53 This subsection does not require an insurer to pay a claim that
54 is not a clean claim except as provided herein.

55 (4) Interest, at a rate of ten percent per annum, accruing
56 after the forty-day period provided in subdivision (1), subsec-
57 tion (a) of this section owing or accruing on any claim under
58 any provider contract or under any applicable law, shall be paid
59 and accompanied by an explanation of the assessment on each
60 claim of interest paid, without necessity of demand, at the time
61 the claim is paid or within thirty days thereafter.

62 (5) Every insurer shall establish and implement reasonable
63 policies to permit any provider with which there is a provider
64 contract:

65 (A) To promptly confirm in advance during normal
66 business hours by a process agreed to between the parties
67 whether the health care services to be provided are a covered
68 benefit; and

69 (B) To determine the insurer's requirements applicable to
70 the provider (or to the type of health care services which the
71 provider has contracted to deliver under the provider contract)
72 for:

73 (i) Precertification or authorization of coverage decisions;

74 (ii) Retroactive reconsideration of a certification or
75 authorization of coverage decision or retroactive denial of a
76 previously paid claim;

77 (iii) Provider-specific payment and reimbursement method-
78 ology; and

79 (iv) Other provider-specific, applicable claims processing
80 and payment matters necessary to meet the terms and condi-
81 tions of the provider contract, including determining whether a
82 claim is a clean claim.

83 (C) Every insurer shall make available to the provider
84 within twenty business days of receipt of a request, reasonable
85 access either electronically or otherwise, to all the policies that
86 are applicable to the particular provider or to particular health
87 care services identified by the provider. In the event the
88 provision of the entire policy would violate any applicable
89 copyright law, the insurer may instead comply with this
90 subsection by timely delivering to the provider a clear explana-
91 tion of the policy as it applies to the provider and to any health
92 care services identified by the provider.

93 (6) Every insurer shall pay a clean claim if the insurer has
94 previously authorized the health care service or has advised the
95 provider or enrollee in advance of the provision of health care
96 services that the health care services are medically necessary
97 and a covered benefit, unless:

98 (A) The documentation for the claim provided by the
99 person submitting the claim clearly fails to support the claim as
100 originally authorized; or

101 (B) The insurer's refusal is because:

102 (i) Another payor or party is responsible for the payment;

103 (ii) The provider has already been paid for the health care
104 services identified on the claim;

105 (iii) The claim was submitted fraudulently or the authoriza-
106 tion was based in whole or material part on erroneous informa-
107 tion provided to the insurer by the provider, enrollee, or other
108 person not related to the insurer;

109 (iv) The person receiving the health care services was not
110 eligible to receive them on the date of service and the insurer
111 did not know, and with the exercise of reasonable care could
112 not have known, of the person's eligibility status;

113 (v) There is a dispute regarding the amount of charges
114 submitted; or

115 (vi) The service provided was not a covered benefit and the
116 insurer did not know, and with the exercise of reasonable care
117 could not have known, at the time of the certification that the
118 service was not covered.

119 (7) A previously paid claim may be retroactively denied
120 only in accordance with this subdivision.

121 (A) No insurance company may retroactively deny a
122 previously paid claim unless:

123 (i) The claim was submitted fraudulently;

124 (ii) The claim contained material misrepresentations;

125 (iii) The claim payment was incorrect because the provider
126 was already paid for the health care services identified on the
127 claim or the health care services were not delivered by the
128 provider;

129 (iv) The provider was not entitled to reimbursement;

130 (v) The service provided was not covered by the health
131 benefit plan; or

132 (vi) The insured was not eligible for reimbursement.

133 (B) A provider to whom a previously paid claim has been
134 denied by a health plan in accordance with this section shall,
135 upon receipt of notice of retroactive denial by the plan, notify
136 the health plan within forty days of the provider's intent to pay
137 or demand written explanation of the reasons for the denial.

138 (i) Upon receipt of explanation for retroactive denial, the
139 provider shall reimburse the plan within thirty days for allowing
140 an offset against future payments or provide written notice of
141 dispute.

142 (ii) Disputes shall be resolved between the parties within
143 thirty days of receipt of notice of dispute. The parties may agree
144 to a process to resolve the disputes in a provider contract.

145 (iii) Upon resolution of dispute, the provider shall pay any
146 amount due or provide written authorization for an offset
147 against future payments.

148 (C) A health plan may retroactively deny a claim only for
149 the reasons set forth in subparagraphs (iii), (iv), (v) and (vi),
150 paragraph (A) of this subdivision (7) for a period of one year
151 from the date the claim was originally paid. There shall be no
152 time limitations for retroactively denying a claim for the
153 reasons set forth in subparagraphs (i) and (ii) above.

154 (8) No provider contract may fail to include or attach at the
155 time it is presented to the provider for execution:

156 (A) The fee schedule, reimbursement policy or statement as
157 to the manner in which claims will be calculated and paid
158 which is applicable to the provider or to the range of health care
159 services reasonably expected to be delivered by that type of
160 provider on a routine basis; and

161 (B) All material addenda, schedules and exhibits thereto
162 applicable to the provider or to the range of health care services
163 reasonably expected to be delivered by that type of provider
164 under the provider contract.

165 (9) No amendment to any provider contract or to any
166 addenda, schedule or exhibit, or new addenda, schedule,
167 exhibit, applicable to the provider to the extent that any of them
168 involve payment or delivery of care by the provider, or to the
169 range of health care services reasonably expected to be deliv-
170 ered by that type of provider, is effective as to the provider,
171 unless the provider has been provided with the applicable
172 portion of the proposed amendment, or of the proposed new
173 addenda, schedule or exhibit, and has failed to notify the insurer
174 within twenty business days of receipt of the documentation of
175 the provider's intention to terminate the provider contract at the
176 earliest date thereafter permitted under the provider contract.

177 (10) In the event that the insurer's provision of a policy
178 required to be provided under subdivision (8) or (9) of this
179 subsection would violate any applicable copyright law, the
180 insurer may instead comply with this section by providing a
181 clear, written explanation of the policy as it applies to the
182 provider.

183 (11) The insurer shall complete a credential check of any
184 new provider and accept or reject the provider within four
185 months following the submission of the provider's completed

186 application: *Provided*, That time frame may be extended for an
187 additional three months because of delays in primary source
188 verification. The insurer shall make available to providers a list
189 of all information required to be included in the application. A
190 provider who is permitted by the insurer to provide services and
191 who provides services during the credentialing period shall be
192 paid for the services if the provider's application is approved.

193 (b) Without limiting the foregoing, in the processing of any
194 payment of claims for health care services rendered by provid-
195 ers under provider contracts and in performing under its
196 provider contracts, every insurer subject to regulation by this
197 article shall adhere to and comply with the minimum fair
198 business standards required under subsection (a) of this section.
199 The commissioner has jurisdiction to determine if an insurer
200 has violated the standards set forth in subsection (a) of this
201 section by failing to include the requisite provisions in its
202 provider contracts. The commissioner has jurisdiction to
203 determine if the insurer has failed to implement the minimum
204 fair business standards set out in subdivisions (1) and (2),
205 subsection (a) of this section in the performance of its provider
206 contracts.

207 (c) No insurer is in violation of this section if its failure to
208 comply with this section is caused in material part by the person
209 submitting the claim or if the insurer's compliance is rendered
210 impossible due to matters beyond the insurer's reasonable
211 control, such as an act of God, insurrection, strike, fire, or
212 power outages, which are not caused in material part by the
213 insurer.

**§33-45-3. Damages, attorney fees and costs available to providers
upon insurer's violation of article or breach of
contract provisions.**

1 Any provider who suffers loss as the result of an insurer's
2 violation of any provision of this article or an insurer's breach
3 of any provider contract provision required by this article is
4 entitled to initiate an action to recover actual damages. The
5 commissioner shall not be deemed to be a "trier of fact" for
6 purposes of this section.

§33-45-4. Providers invoking rights protected.

1 No insurer or its network, provider panel or intermediary
2 may terminate or fail to renew the employment or other
3 contractual relationship with a provider, or any provider
4 contract, or otherwise penalize any provider, for invoking any
5 of the provider's rights under this article or under the provider
6 contract.

§33-45-5. Commissioner authorized to propose rules.

1 The commissioner is authorized to propose rules for
2 legislative approval in accordance with the provisions of article
3 three, chapter twenty-nine-a of this code, to implement the
4 provisions of this article.

§33-45-6. Commissioner's authority.

1 Nothing in this article shall limit or modify the commis-
2 sioner's duties and authority under article two of this chapter.

§33-45-7. Contractual alternative reimbursement arrangements.

1 This article shall not apply to provider contracts in which
2 payment is rendered by periodic, capitation or withhold
3 payments.

§33-45-8. Exemptions.

1 (a) The provisions of this article do not apply to claims that
2 are not covered under the terms of the health plan.

3 (b) Nothing in this article shall preclude the right of a
4 provider or insurer to pursue any other administrative, civil or
5 criminal proceedings or remedies permitted under state or
6 federal law.

7 (c) The provisions of this article do not apply when there is
8 a good faith dispute about the legitimacy of amount of the
9 claim, or when there is a reasonable basis supported by specific
10 information that such claim was submitted fraudulently or with
11 material misrepresentation.

12 (d) An insurer shall not be considered to be in violation of
13 this article if the insurer's failure to comply is caused in
14 material part by the person submitting the claim or the health
15 insurer's compliance is rendered impossible due to matters
16 beyond the insurer's reasonable control.

17 (e) A provider shall not be considered to be in violation of
18 this article if the failure to comply is caused in material part by
19 the insured or the provider's compliance is rendered impossible
20 due to matters beyond the provider's reasonable control.

21 (f) The provisions of this article do not apply to services
22 provided outside the state.



CHAPTER 170

(H. B. 2936 — By Delegates Michael and Doyle)



[Passed April 12, 2001; in effect ninety days from passage. Approved by the Governor.]



AN ACT to amend article twenty-four, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section

two-a, relating to reimbursement of the compact committee official representing West Virginia on the interstate compact commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. INTERSTATE COMPACT ON LICENSURE OF PARTICIPANTS IN LIVE HORSE RACING WITH PARI-MUTUEL WAGERING.

§19-24-2a. Reimbursement for compact committee official member.

1 The duly appointed and designated official state representa-
2 tive on the compact committee shall be reimbursed for all
3 actual expenses and expenditures incurred and expended in the
4 performance of his or her official duties as a compact commit-
5 tee member, notwithstanding any provision set forth to the
6 contrary in article twenty-three of this chapter nor any provision
7 set forth to the contrary in section eleven, article three, chapter
8 twelve of this code or any rules promulgated pursuant thereto.

CHAPTER 171

(Com. Sub. for S. B. 451 — By Senators Craigo, Sharpe, Jackson, Chafin, Prezioso, Plymale, Love, Helmick, Bowman, Bailey, Anderson, Edgell, Unger, McCabe, Boley, Minear and Sprouse)

[Passed April 14, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article one, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one-a, two, three, four, five, six, eight, nine, nine-a, nine-e, ten, eleven and twelve, article six of said chapter, all relating to the West Virginia investment management board and its investment management and loans for business and industrial development and availability of funds and interest rates; correcting and clarifying inconsistencies; deleting outdated provisions regarding conflict of interest provision regarding board members and state depositories; providing for the common investment of pension, workers' compensation and other assets in board-created vehicles; changing date of annual meeting; providing for staggered terms of board members; conforming statutory trust language to trust indenture; providing for appropriate fees to be assessed against all assets invested and managed by the board; amending and clarifying certain restrictions on investments; requiring the board to make certain loans to the West Virginia economic development authority; specifying limits and conditions for same; clarifying that board members bear no fiduciary responsibility for such loans made to the economic development authority; and rebalancing of assets when investment limitations exceeded.

Be it enacted by the Legislature of West Virginia:

That section eight, article one, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections one-a, two, three, four, five, six, eight, nine, nine-a, nine-e, ten, eleven and twelve, article six of said chapter be amended and reenacted, all to read as follows:

Article

1. State Depositories.

6. West Virginia Investment Management Board.

ARTICLE 1. STATE DEPOSITORIES.

§12-1-8. Conflict of interest.

1 No depository in this state may serve or be eligible for
2 designation as a state depository if any employee of the
3 treasurer's office, or a spouse or minor child of that employee,
4 is an officer, director or employee of the depository or owns
5 greater than two percent of the depository either in his or her
6 own name or beneficially or an interest in the depository. An
7 employee of the treasurer's office shall disclose the circum-
8 stance, if any, in the sworn statement required under the
9 provisions of section one, article one, chapter six-b of this code.

ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.

§12-6-1a. Legislative findings.

§12-6-2. Definitions.

§12-6-3. West Virginia investment management board continued; body corporate;
trust fund board; trustees; nomination and appointment of trustees,
qualifications and terms of appointment, advice and consent; annual
and other meetings; designation of representatives and committees;
board meetings with committees regarding investment policy
statement required; open meetings, qualifications.

§12-6-4. Management and control of fund; officers; staff; fiduciary or surety bonds
for trustees; liability of trustees.

§12-6-5. Powers of the board.

§12-6-6. Annual audits; reports and information to constitutional and legislative
officers, council of finance and administration, consolidated public
retirement board, workers' compensation fund and coal-workers'
pneumoconiosis fund; statements and reports open for inspection.

§12-6-8. Investment funds established; management thereof.

§12-6-9. Fees for service.

§12-6-9a. Trust indenture.

§12-6-9e. Legislative findings; loans for industrial development; availability of
funds and interest rates.

§12-6-10. Restrictions on investments.

§12-6-11. Standard of care.

§12-6-12. Investment restrictions.

§12-6-1a. Legislative findings.

1 (a) The Legislature hereby finds and declares that all the
2 public employees covered by the public employees retirement

3 system, the teachers retirement system, the West Virginia state
4 police retirement system, the death, disability and retirement
5 fund of the division of public safety, the judges' retirement
6 system and the deputy sheriff's retirement system should
7 benefit from a prudent and conscientious staff of financial
8 professionals dedicated to the administration, investment and
9 management of those employees' and employers' financial
10 contributions and that an independent board and staff should be
11 immune to changing political climates and should provide a
12 stable and continuous source of professional financial invest-
13 ment and management.

14 (b) The Legislature finds and declares that teachers and
15 other public employees throughout the state are experiencing
16 economic difficulty and that in order to reduce this economic
17 hardship on these dedicated public employees and to help foster
18 sound financial practices, the West Virginia investment
19 management board is given the authority to develop, implement
20 and maintain an efficient and modern system for the investment
21 and management of the state's money. The Legislature further
22 finds that in order to implement these sound fiscal policies, the
23 West Virginia investment management board shall operate as
24 an independent board with its own full-time staff of financial
25 professionals, immune to changing political climates, in order
26 to provide a stable and continuous source of professional
27 financial management.

28 (c) The Legislature hereby finds and declares further that
29 experience has demonstrated that prudent investment provides
30 diversification and beneficial return not only for public employ-
31 ees but for all citizens of the state and that in order to have
32 access to this sound fiscal policy, public employee and em-
33 ployer contributions to the 401(a) plans are declared to be made
34 to an irrevocable trust on behalf of each plan, available for no
35 use or purpose other than for the benefit of those public
36 employees.

37 (d) The Legislature hereby finds and declares further that
38 the workers' compensation funds and coal-workers' pneumoco-
39 niosis fund are trust funds to be used exclusively for those
40 workers, miners and their beneficiaries who have sacrificed
41 their health in the performance of their jobs and further finds
42 that the assets available to pay awarded benefits should be
43 prudently invested so that awards may be paid.

44 (e) The Legislature hereby finds and declares further that an
45 independent public body corporate with appropriate governance
46 shall be the best means of assuring prudent financial manage-
47 ment of these funds under rapidly changing market conditions
48 and regulations.

49 (f) The Legislature hereby finds and declares further that in
50 accomplishing this purpose, the West Virginia investment
51 management board, created and established by this article, is
52 acting in all respects for the benefit of the state's public
53 employees and ultimately the citizens of the state and the West
54 Virginia investment management board is empowered by this
55 article to act as trustee of the irrevocable trusts created by this
56 article and to manage and invest other state funds.

57 (g) The Legislature hereby finds and declares further that
58 the standard of care and prudence applied to trustees, the
59 conduct of the affairs of the irrevocable trusts created by this
60 article and the investment of other state funds is intended to be
61 that applied to the investment of funds as described in the
62 "uniform prudent investor act" codified as article six-c, chapter
63 forty-four of this code and as described in section eleven of this
64 article.

65 (h) The Legislature further finds and declares that the West
66 Virginia supreme court of appeals declared the "West Virginia
67 Trust Fund Act" unconstitutional in its decision rendered on the
68 twenty-eighth day of March, one thousand nine hundred

69 ninety-seven, to the extent that it authorized investments in
70 corporate stock, but the court also recognized that there were
71 other permissible constitutional purposes of the “West Virginia
72 Trust Fund Act” and that it is the role of the Legislature to
73 determine those purposes consistent with the court’s decision
74 and the constitution of West Virginia.

75 (i) The Legislature hereby further finds and declares that it
76 is in the best interests of the state and its citizens to create a
77 new investment management board in order to: (1) Be in full
78 compliance with the provisions of the constitution of West
79 Virginia; and (2) protect all existing legal and equitable rights
80 of persons who have entered into contractual relationships with
81 the West Virginia board of investments and the West Virginia
82 trust fund.

§12-6-2. Definitions.

1 As used in this article, unless a different meaning clearly
2 appears from the context:

3 (1) “Beneficiaries” means those individuals entitled to
4 benefits from the participant plans;

5 (2) “Board” means the governing body for the West
6 Virginia investment management board and any reference
7 elsewhere in this code to board of investments or West Virginia
8 trust fund means the board as defined in this subdivision;

9 (3) “Consolidated fund” means the investment fund
10 managed by the board and established pursuant to subsection
11 (a), section eight of this article;

12 (4) “401(a) plan” means a plan which is described in
13 section 401(a) of the Internal Revenue Code of 1986, as
14 amended, and with respect to which the board has been desig-

15 nated to hold assets of the plan in trust pursuant to the provi-
16 sions of section nine-a of this article;

17 (5) "Local government funds" means the moneys of a
18 political subdivision, including policemen's pension and relief
19 funds, firemen's pension and relief funds and volunteer fire
20 departments, transferred to the board for deposit;

21 (6) "Participant plan" means any plan or fund subject now
22 or hereafter to subsection (a), section nine-a, article six of this
23 chapter;

24 (7) "Political subdivision" means and includes a county,
25 municipality or any agency, authority, board, county board of
26 education, commission or instrumentality of a county or
27 municipality and regional councils created pursuant to the
28 provisions of section five, article twenty-five, chapter eight of
29 this code;

30 (8) "Trustee" means any member serving on the West
31 Virginia investment management board: *Provided*, That in
32 section nine-a of this article in which the terms of the trusts are
33 set forth, "trustee" means the West Virginia investment
34 management board;

35 (9) "Securities" means all bonds, notes, debentures or other
36 evidences of indebtedness and other lawful investment instru-
37 ments; and

38 (10) "State funds" means all moneys of the state which may
39 be lawfully invested except the "school fund" established by
40 section four, article XII of the state constitution.

**§12-6-3. West Virginia investment management board continued;
body corporate; trust fund board; trustees; nomina-
tion and appointment of trustees, qualifications and
terms of appointment, advice and consent; annual**

and other meetings; designation of representatives and committees; board meetings with committees regarding investment policy statement required; open meetings, qualifications.

1 (a) There is hereby continued the West Virginia investment
2 management board. The board is created as a public body
3 corporate and established to provide prudent fiscal administra-
4 tion, investment and management for the funds of the partici-
5 pant plans and any other funds managed by the board.

6 (b) The board shall be governed by a board of trustees,
7 consisting of thirteen members:

8 (1) Nominations made to the West Virginia trust fund board
9 and the West Virginia board of investments shall remain in
10 effect and are hereby specifically reauthorized and those
11 members shall be members of the investment management
12 board and shall serve out the remainder of their respective
13 terms subject to the advice and consent of the Senate: *Provided,*
14 That prior appointments which have been confirmed by the
15 Senate are hereby specifically reauthorized without further
16 action of the Senate.

17 (2) Any appointment is effective immediately upon
18 appointment by the governor with respect to voting, constitut-
19 ing a quorum, receiving compensation and expenses and all
20 other rights and privileges of the trustee position. All appoint-
21 ees shall have experience in pension management, institutional
22 management or financial markets and one trustee shall be an
23 attorney experienced in finance and investment matters and one
24 trustee shall be a certified public accountant.

25 (3) The governor, the state auditor and the state treasurer or
26 their designees shall serve as members of the board. They shall
27 serve by virtue of their office and are not entitled to compensa-
28 tion under the provisions of this article. The governor, the

29 auditor and the treasurer or their designees are subject to all
30 duties, responsibilities and requirements of the provisions of
31 this article, including, but not limited to, the provisions of
32 subsections (e) and (f), section four of this article.

33 (c) At the end of each trustee's term, the governor may
34 reappoint or appoint a successor who shall serve for a term
35 ending on the thirty-first day of January in the sixth year
36 following the year of his or her appointment: *Provided*, That for
37 all terms ending in the year two thousand one, two appoint-
38 ments shall be for two-year terms; two appointments shall be
39 for three-year terms; one shall be for a four-year term; and two
40 shall be for six-year terms. Except for vacancy appointments
41 made pursuant to subsection (d) of this section, all subsequent
42 appointments shall be for terms ending on the thirty-first day of
43 January in the sixth year following the year of appointment. No
44 more than six of the ten appointed trustees may belong to the
45 same political party.

46 (d) In the event of a vacancy among the trustees, an
47 appointment shall be made by the governor to fill the unexpired
48 term.

49 (e) The governor may remove any trustee, other than
50 trustees who serve by virtue of their elective office, in case of
51 gross negligence or misfeasance and may declare that position
52 vacant and may appoint a person for the vacancy as provided in
53 subsection (d) of this section.

54 (f) Each trustee, other than those enumerated in subsection
55 (b), subdivision (3) of this section, is entitled to receive and, at
56 the trustee's option, the board shall pay to the trustee compen-
57 sation in the amount of five thousand dollars per year and
58 additional compensation in the amount of five hundred dollars
59 per meeting attended by the trustee in excess of the four
60 quarterly meetings required by this section. In addition, all

61 trustees shall receive reasonable and necessary expenses
62 actually incurred in discharging trustee duties pursuant to this
63 article.

64 (g) The board shall meet quarterly and may include in its
65 bylaws procedures for the calling and holding of additional
66 meetings. For any quarterly or additional meeting in which the
67 board shall review or modify its securities list or its investment
68 objectives pursuant to subsection (f), section twelve of this
69 article, the board shall give ten days' notice in writing to the
70 designated representative of each participant plan selected
71 pursuant to subdivision (1), subsection (i) of this section and the
72 meeting shall be open to the members and beneficiaries of the
73 participant plans for that portion of the meeting in which the
74 board undertakes the review or modification.

75 (h) The board shall hold an annual meeting before the start
76 of the fiscal year. The annual meeting may also serve as a
77 quarterly meeting. The annual meeting shall be open to the
78 public and the board shall receive oral and written comments
79 from representatives, members and beneficiaries of the partici-
80 pant plans and from other citizens of the state. At the annual
81 meeting, the board shall adopt a fee schedule and a budget
82 reflecting fee structures for the year.

83 (i) Pursuant to subsection (j) of this section, the board shall
84 meet with committees representing the participant plans to
85 discuss the board's drafting, reviewing or modifying the written
86 investment policy of the trust with respect to that committee's
87 participant plan pursuant to section twelve of this article.
88 Representatives and committees shall be designated as follows:

89 (1) The West Virginia consolidated public retirement board
90 shall promulgate procedural rules by which each 401(a) plan for
91 which the board is trustee, shall designate an individual
92 representative of each 401(a) plan and the West Virginia

93 workers' compensation commission shall promulgate proce-
94 dural rules by which the pneumoconiosis fund and the workers'
95 compensation fund shall designate an individual representative
96 of each fund.

97 (2) On or before the first day of June of each year, the
98 consolidated public retirement board shall submit in writing to
99 the board the names of the six designated representatives of the
100 401(a) plans and the workers' compensation commission shall
101 submit the names of the two representatives.

102 (3) Each designated representative shall provide to the
103 board his or her current address, updated each year on or before
104 the first day of July, to which address the board shall provide
105 notice of meetings of the board pursuant to subsection (g) of
106 this section.

107 (4) Each designated representative shall submit in writing
108 to the board on or before the first day of July of each year the
109 names of no more than three persons comprising a committee
110 representing the beneficiaries of that representative's partici-
111 pant plan.

112 (j) At its annual meeting, the board shall meet with each of
113 the seven committees, formed pursuant to subdivision (1),
114 subsection (i) of this section, for the purpose of receiving input
115 from the committees regarding the board's drafting, reviewing
116 or modifying its written investment policy statement for
117 investment of the funds of the participant plans. In developing
118 the investment policy statement, the trustees shall receive each
119 committee's stated objectives and policies regarding the risk
120 tolerances and return expectations of each participant plan, with
121 attention to the factors enumerated in section twelve of this
122 article, in order to provide for the continuing financial security
123 of the trusts and the participant plans. The board may meet with

124 the committees or any of them at its quarterly and additional
125 meetings for the same purpose.

126 (k) All meetings of the board shall be open to the represen-
127 tatives of the participant plans as appointed pursuant to subdivi-
128 sion (1), subsection (i) of this section. The representatives are
129 subject to any rules, bylaws, guidelines, requirements and
130 standards promulgated by the board. The representatives shall
131 observe standards of decorum established by the board. The
132 representatives are subject to the same code of conduct applica-
133 ble to the trustees and are subject to all board rules and bylaws.
134 The representatives are also subject to any requirements of
135 confidentiality applicable to the trustees. Each representative is
136 liable for any act which he or she undertakes which violates any
137 rule, bylaw or statute governing ethical standards, confidential-
138 ity or other standard of conduct imposed upon the trustees or
139 the representatives. Any meeting of the board may be closed,
140 upon adoption of a motion by any trustee, when necessary to
141 preserve the attorney-client privilege, to protect the privacy
142 interests of individuals, to review personnel matters or to
143 maintain confidentiality when confidentiality is in the best
144 interest of the beneficiaries of the trusts.

§12-6-4. Management and control of fund; officers; staff; fiduciary or surety bonds for trustees; liability of trustees.

1 (a) The management and control of the board shall be
2 vested solely in the trustees in accordance with the provisions
3 of this article.

4 (b) The governor shall be the chairman of the board and the
5 trustees shall elect a vice chairman who may not be a constitu-
6 tional officer or his or her designee to serve for a term of two
7 years. Effective with any vacancy in the vice chairmanship, the
8 board shall elect a vice chairman to a new two-year term. The

9 vice chairman shall preside at all meetings in the absence of the
10 chairman. Annually, the trustees shall elect a secretary, who
11 need not be a member of the board, to keep a record of the
12 proceedings of the board.

13 (c) The trustees shall appoint a chief executive officer of
14 the board and shall fix his or her duties and compensation. The
15 chief executive officer shall have five years' experience in
16 investment management with public or private funds within the
17 ten years next preceding the date of appointment. The chief
18 executive officer additionally shall have academic degrees,
19 professional designations and other investment management or
20 investment oversight or institutional investment experience in
21 a combination the trustees consider necessary to carry out the
22 responsibilities of the chief executive officer position as defined
23 by the trustees.

24 (d) The trustees shall retain an internal auditor to report
25 directly to the trustees and shall fix his or her compensation.
26 The internal auditor shall be a certified public accountant with
27 at least three years experience as an auditor. The internal
28 auditor shall develop an internal audit plan, with board ap-
29 proval, for the testing of procedures and the security of transac-
30 tions.

31 (e) Each trustee shall give a separate fiduciary or surety
32 bond from a surety company qualified to do business within this
33 state in a penalty amount of one million dollars for the faithful
34 performance of his or her duties as a trustee. The board shall
35 purchase a blanket bond for the faithful performance of its
36 duties in the amount of fifty million dollars or in an amount
37 equivalent to one percent of the assets under management,
38 whichever is greater. The amount of the blanket bond is in
39 addition to the one million dollar individual bond required of
40 each trustee by the provisions of this section. The board may
41 require a fiduciary or surety bond from a surety company

42 qualified to do business in this state for any person who has
43 charge of, or access to, any securities, funds or other moneys
44 held by the board and the amount of the fiduciary or surety
45 bond shall be fixed by the board. The premiums payable on all
46 fiduciary or surety bonds shall be an expense of the board.

47 (f) The trustees and employees of the board are not liable
48 personally, either jointly or severally, for any debt or obligation
49 created by the board: *Provided*, That the trustees and employees
50 of the board are liable for acts of misfeasance or gross negli-
51 gence.

52 (g) The board is exempt from the provisions of sections
53 seven and eleven, article three, chapter twelve of this code and
54 article three, chapter five-a of said code: *Provided*, That the
55 trustees and employees of the board are subject to purchasing
56 policies and procedures which shall be promulgated by the
57 board. The purchasing policies and procedures may be promul-
58 gated as emergency rules pursuant to section fifteen, article
59 three, chapter twenty-nine-a of this code.

60 (h) Any employee of the West Virginia trust fund who
61 previously was an employee of another state agency may return
62 to the public employees retirement system pursuant to section
63 eighteen, article ten, chapter five of this code and may elect to
64 either: (1) Transfer to the public employees retirement system
65 his or her employee contributions, with accrued interest and, if
66 vested, his or her employer contributions, with accrued interest
67 and retain as credited state service all time served as an
68 employee of the West Virginia trust fund; or (2) retain all
69 employee contributions with accrued interest and, if vested, his
70 or her employer contributions with interest and forfeit all
71 service credit for the time served as an employee of the West
72 Virginia trust fund.

§12-6-5. Powers of the board.

1 The board may exercise all powers necessary or appropriate
2 to carry out and effectuate its corporate purposes. The board
3 may:

4 (1) Adopt and use a common seal and alter it at pleasure;

5 (2) Sue and be sued;

6 (3) Enter into contracts and execute and deliver instru-
7 ments;

8 (4) Acquire (by purchase, gift or otherwise), hold, use and
9 dispose of real and personal property, deeds, mortgages and
10 other instruments;

11 (5) Promulgate and enforce bylaws and rules for the
12 management and conduct of its affairs;

13 (6) Notwithstanding any other provision of law, retain and
14 employ legal, accounting, financial and investment advisors and
15 consultants;

16 (7) Acquire (by purchase, gift or otherwise), hold, ex-
17 change, pledge, lend and sell or otherwise dispose of securities
18 and invest funds in interest earning deposits and in any other
19 lawful investments;

20 (8) Maintain accounts with banks, securities dealers and
21 financial institutions both within and outside this state;

22 (9) Engage in financial transactions whereby securities are
23 purchased by the board under an agreement providing for the
24 resale of the securities to the original seller at a stated price;

25 (10) Engage in financial transactions whereby securities
26 held by the board are sold under an agreement providing for the
27 repurchase of the securities by the board at a stated price;

28 (11) Consolidate and manage moneys, securities and other
29 assets of the other funds and accounts of the state and the
30 moneys of political subdivisions which may be made available
31 to it under the provisions of this article;

32 (12) Enter into agreements with political subdivisions of the
33 state whereby moneys of the political subdivisions are invested
34 on their behalf by the board;

35 (13) Charge and collect administrative fees from political
36 subdivisions for its services;

37 (14) Exercise all powers generally granted to and exercised
38 by the holders of investment securities with respect to manage-
39 ment of the investment securities;

40 (15) Contract with one or more banking institutions in or
41 outside the state for the custody, safekeeping and management
42 of securities held by the board;

43 (16) Make and, from time to time, amend and repeal
44 bylaws, regulations and procedures not inconsistent with the
45 provisions of this article;

46 (17) Hire its own employees, consultants, managers and
47 advisors as it considers necessary and fix their compensation
48 and prescribe their duties;

49 (18) Develop, implement and maintain its own banking
50 accounts and investments;

51 (19) Do all things necessary to implement and operate the
52 board and carry out the intent of this article;

53 (20) Require the state auditor and treasurer to transmit state
54 funds on a daily basis for investment: *Provided*, That money

55 held for meeting the daily obligations of state government need
56 not be transferred;

57 (21) Upon request of the treasurer, transmit funds for
58 deposit in the state treasury to meet the daily obligations of
59 state government;

60 (22) Establish one or more investment funds for the purpose
61 of investing the funds for which it is trustee, custodian or
62 otherwise authorized to invest pursuant to this article. Interests
63 in each fund shall be designated as units and the board shall
64 adopt industry standard accounting procedures to determine
65 each fund's unit value. The securities in each investment fund
66 are the property of the board and each fund shall be considered
67 an investment pool or fund and may not be considered a trust
68 nor may the securities of the various investment funds be
69 considered held in trust. However, units in an investment fund
70 established by or sold by the board and the proceeds from the
71 sale or redemption of any unit may be held by the board in its
72 role as trustee of the participant plans; and

73 (23) Notwithstanding any other provision of the code to the
74 contrary, conduct investment transactions, including purchases,
75 sales, redemptions and income collections, which shall not be
76 treated by the auditor as recordable transactions on the state's
77 accounting system.

§12-6-6. Annual audits; reports and information to constitutional and legislative officers, council of finance and administration, consolidated public retirement board, workers' compensation fund and coal-workers' pneumoconiosis fund; statements and reports open for inspection.

1 (a) The board shall cause an annual financial and compli-
2 ance audit of the assets managed by the board to be made by a
3 certified public accounting firm which has a minimum staff of

4 ten certified public accountants and which is a member of the
5 American institute of certified public accountants and, if doing
6 business in West Virginia, a member of the West Virginia
7 society of certified public accountants. The financial and
8 compliance audit shall be made of the board's books, accounts
9 and records with respect to its receipts, disbursements, invest-
10 ments, contracts and all other matters relating to its financial
11 operations. Copies of the audit report shall be furnished to the
12 governor, state treasurer, state auditor, president of the Senate,
13 speaker of the House of Delegates, council of finance and
14 administration and consolidated public retirement board.

15 (b) The board shall produce monthly financial statements
16 for the assets managed by the board and cause them to be
17 delivered to each member of the board and the executive
18 secretary of the consolidated public retirement board as
19 established in sections one and two, article ten-d, chapter five
20 of this code and to the commissioner of the bureau of employ-
21 ment programs as administrator of the workers' compensation
22 fund and coal-workers' pneumoconiosis fund as established in
23 section one, article one, chapter twenty-three of this code and
24 section one, article three of said chapter and section seven,
25 article four-b of said chapter.

26 (c) The board shall deliver in each quarter to the council of
27 finance and administration and the consolidated public retire-
28 ment board a report detailing the investment performance of the
29 401(a) plans.

30 (d) The board shall cause an annual audit of the reported
31 returns of the assets managed by the board to be made by an
32 investment consulting or a certified public accounting firm
33 meeting the criteria set out in subsection (a) of this section. The
34 board shall furnish copies of the audit report to the governor,
35 state treasurer, state auditor, president of the Senate, speaker of

36 the House of Delegates, council of finance and administration
37 and consolidated public retirement board.

38 (e) The board shall provide any other information requested
39 in writing by the council of finance and administration.

40 (f) All statements and reports with respect to participant
41 plans required in this section shall be available for inspection
42 by the members and beneficiaries and designated representa-
43 tives of the participant plans.

§12-6-8. Investment funds established; management thereof.

1 (a) There is hereby continued a special investment fund to
2 be managed by the board and designated as the “consolidated
3 fund”.

4 (b) Each board, commission, department, official or agency
5 charged with the administration of state funds may make
6 moneys available to the board for investment.

7 (c) Each political subdivision of this state through its
8 treasurer or equivalent financial officer may enter into agree-
9 ments with the board for the investment of moneys of the
10 political subdivision. Any political subdivision may enter into
11 an agreement with any state agency from which it receives
12 funds to allow the funds to be transferred to their investment
13 account with the investment management board.

14 (d) Moneys held in the various funds and accounts adminis-
15 tered by the board shall be invested as permitted by this article
16 and subject to the restrictions contained in this article. For the
17 consolidated fund, the treasurer shall maintain records of the
18 deposits and withdrawals of each participant and the perfor-
19 mance of the various funds and accounts. The board shall report
20 the earnings on the various funds under management to the
21 treasurer at the times determined by the treasurer. The board

22 shall also establish rules for the administration of the various
23 funds and accounts established by this section as it considers
24 necessary for the administration of the funds and accounts,
25 including, but not limited to: (1) The specification of amounts
26 which may be deposited in any fund or account and minimum
27 periods of time for which deposits will be retained; and (2)
28 creation of reserves for losses: *Provided*, That in the event any
29 moneys made available to the board may not lawfully be
30 combined for investment or deposited in the consolidated funds
31 established by this section, the board may create special
32 accounts and may administer and invest those moneys in
33 accordance with the restrictions specially applicable to those
34 moneys.

§12-6-9. Fees for service.

1 The board may charge fees, which may be subtracted from
2 the total return, for the reasonable and necessary expenses
3 incurred by the investment management board in rendering
4 services. All fees which are dedicated or identified or readily
5 identifiable to an entity, plan or fund shall be charged to that
6 entity, plan or fund and all other fees shall be charged as a
7 percentage of assets under management. At its annual meeting,
8 the board shall adopt a fee schedule and a budget reflecting fee
9 structures.

§12-6-9a. Trust indenture.

1 The provisions of the trust indenture entered into by the
2 governor on the first day of July, one thousand nine hundred
3 ninety-six, with the West Virginia trust fund, inc., acting as the
4 trustee, are superseded by the following provisions:

5 (a) The board shall continue to hold each of the participant
6 plans specified by this article in a separate irrevocable trust as
7 trustee pursuant to the terms and provisions set forth in this
8 section and with the earnings and losses accounted for and

9 charged individually to each participant plan and trust: *Pro-*
10 *vided:* That the board shall be authorized to invest the assets
11 held in each participant plan in any investment fund even
12 though the board may also invest non-401(a) moneys in the
13 investment fund. Participant plans, each declared by this section
14 to be held in a separate irrevocable trust, include, but are not
15 limited to, the following and any other plans that may be added
16 to this section or otherwise designated by the Legislature from
17 time to time:

- 18 (1) The public employees' retirement system;
- 19 (2) The teachers' retirement system;
- 20 (3) The West Virginia state police retirement system;
- 21 (4) The death, disability and retirement fund of the division
22 of public safety;
- 23 (5) The judges' retirement system;
- 24 (6) The deputy sheriffs' retirement system;
- 25 (7) The pneumoconiosis fund;
- 26 (8) The workers' compensation fund; and
- 27 (9) The wildlife endowment fund.

28 (b) The Legislature hereby reserves the following rights and
29 powers:

- 30 (1) The right by supplemental agreement to amend, modify
31 or alter the terms of the trusts established by this section
32 without consent of the trustee, or any beneficiary, except that no
33 amendment to a trust which holds any 401(a) plan moneys may
34 be made which allows at any time for any part of the corpus or
35 income (other than the part that is required to pay taxes and

36 administration expenses) to be used for, or diverted to, purposes
37 other than for the exclusive benefit of the employees or their
38 beneficiaries in accordance with the requirements of section
39 401(a)(2) of the Internal Revenue Code, as it may be amended
40 from time to time; and

41 (2) The right to request and receive additional information
42 from the trustee at any time.

43 (c) In the administration of the trusts created by this article,
44 the trustee has the following powers:

45 (1) To purchase, retain, hold, transfer and exchange and to
46 sell, at public or private sale, the whole or any part of the trust
47 estate upon such terms and conditions as it considers advisable;

48 (2) To invest and reinvest the trust estate or any part of the
49 trust estate, in any kind of property, real or personal, including,
50 but not limited to, mortgage or mortgage participations,
51 common stocks, preferred stocks, common trust funds, invest-
52 ment funds established by the board, bonds, notes or other
53 securities, notwithstanding the provisions of articles five and
54 six, chapter forty-four of this code;

55 (3) To carry the securities and other property held in trust
56 either in the name of the trustee or in the name of its nominee;

57 (4) To vote, in person or by proxy, all securities held in
58 trust, to join in or to dissent from and oppose the reorganiza-
59 tion, recapitalization, consolidation, merger, liquidation or sale
60 of corporations or property; to exchange securities for other
61 securities issued in connection with or resulting from any
62 transaction; to pay any assessment or expense which the trustee
63 considers advisable for the protection of its interest as holder of
64 the securities; to deposit securities in any voting trust or with
65 any protective or like committee or with a trustee depository; to

66 exercise any option appurtenant to any securities for the
67 conversion of any securities into other securities; and to
68 exercise or sell any rights issued upon or with respect to the
69 securities of any corporation, all upon terms the trustee consid-
70 ers advisable;

71 (5) To prosecute, defend, compromise, arbitrate or other-
72 wise adjust or settle claims in favor of or against the trustee or
73 other trust estate;

74 (6) To employ and pay from the trusts legal and investment
75 counsel, brokers and any other assistants and agents the trustee
76 considers advisable; and

77 (7) To develop, implement and modify an asset allocation
78 plan for each participant plan. The asset allocation plans shall
79 be implemented within the management and investment of the
80 individual trusts.

81 (d) All trust income shall be free from anticipation,
82 alienation, assignment or pledge by, and free from attachment,
83 execution, appropriation or control by or on behalf of, any and
84 all creditors of any beneficiary by any proceeding at law, in
85 equity, in bankruptcy or insolvency.

86 (e) Notwithstanding any other provision of this article, in
87 the case of a trust which holds any 401(a) plan's money, it is
88 impermissible at any time for any part of the corpus or income
89 to be (within the taxable year or thereafter) used for, or diverted
90 to, purposes other than the exclusive benefit of the employees
91 and their beneficiaries in accordance with the requirements of
92 section 401(a)(2) of the Internal Revenue Code, as it may be
93 amended from time to time.

94 (f) The trustee may receive any other property, real or
95 personal, tangible or intangible, of any kind whatsoever, that

96 may be granted, conveyed, assigned, transferred, devised,
97 bequeathed or made payable to the applicable trust and all the
98 properties shall be held, managed, invested and administered by
99 the trustee as provided in this article.

100 (g) The trustee shall promptly cause to be paid to the state
101 from the applicable trust the amounts certified by the governor
102 as necessary for the monthly payment of benefits to the
103 beneficiaries of the trust.

104 (h) The trustee shall render an annual accounting to the
105 governor not more than one hundred twenty days following the
106 close of the fiscal year of each trust.

107 (i) No trust shall be invalid by reason of any existing law or
108 rule against perpetuities or against accumulations or against
109 restraints upon the power of alienation, but each trust shall
110 continue for the time necessary to accomplish the purposes for
111 which it is established.

**§12-6-9e. Legislative findings; loans for industrial development;
availability of funds and interest rates.**

1 (a) The Legislature hereby finds and declares that the
2 citizens of the state benefit from the creation of jobs and
3 businesses within the state; that a business and industrial
4 development loan program provides for economic growth and
5 stimulation within the state; that loans from pools established
6 in the consolidated fund will assist in providing the needed
7 capital to assist business and industrial development; and that
8 time constraints relating to business and industrial development
9 projects prohibit duplicative review by both the board and West
10 Virginia economic development authority board. This section
11 is enacted in view of these findings.

12 (b) The board shall make available, subject to cash avail-
13 ability, in the form of a revolving loan, up to one hundred fifty

14 million dollars from the consolidated fund to loan the West
15 Virginia economic development authority for business or
16 industrial development projects authorized by section seven,
17 article fifteen, chapter thirty-one of this code and to consolidate
18 existing loans authorized to be made to the West Virginia
19 economic development authority pursuant to this section and
20 pursuant to section twenty, article fifteen, chapter thirty-one of
21 this code which authorizes a one hundred fifty million dollar
22 revolving loan and article eighteen-b, chapter thirty-one of this
23 code which authorizes a fifty million dollar investment pool:
24 *Provided*, That the West Virginia economic development
25 authority may not loan more than fifteen million dollars for any
26 one business or industrial development project. The revolving
27 loan authorized by this subsection shall be secured by one note
28 at a variable interest rate equal to the twelve-month average of
29 the board's yield on its cash liquidity pool. The rate shall be set
30 on the first day of July and the rate shall be adjusted annually
31 on the same date. The maximum annual adjustment may not
32 exceed one percent. Monthly payments made by the West
33 Virginia economic development authority to the board shall be
34 calculated on a one hundred twenty-month amortization. The
35 revolving loan shall be secured by a security interest that
36 pledges and assigns the cash proceeds of collateral from all
37 loans under this revolving loan pool. The West Virginia
38 economic development authority may also pledge as collateral
39 certain revenue streams from other revolving loan pools which
40 source of funds does not originate from federal sources or from
41 the board.

42 The outstanding principal balance of the revolving loan
43 from the board to the West Virginia economic development
44 authority may at no time exceed one hundred three percent of
45 the aggregate outstanding principal balance of the business and
46 industrial loans from the West Virginia economic development
47 authority to economic development projects funded from this
48 revolving loan pool. This provision shall be certified annually

49 by an independent audit of the West Virginia economic
50 development authority financial records.

51 (c) The interest rates and maturity dates on the loans made
52 by the West Virginia economic development authority for
53 business and industrial development projects authorized by
54 section seven, article fifteen, chapter thirty-one of this code
55 shall be at competitive rates and maturities as determined by the
56 West Virginia economic development authority board.

57 (d) Any and all outstanding loans made by the board, or any
58 predecessor entity, to the West Virginia economic development
59 authority shall be refunded by proceeds of the revolving loan
60 contained in this section and no loans may be made hereafter by
61 the board to the West Virginia economic development authority
62 pursuant to section twenty, article fifteen, chapter thirty-one of
63 this code or article eighteen-b of said chapter.

64 (e) The trustees of the board shall bear no fiduciary
65 responsibility as provided in section eleven of this article with
66 specific regard to the revolving loan contemplated in this
67 section.

§12-6-10. Restrictions on investments.

1 Notwithstanding any other provision in this code, moneys
2 on deposit in the consolidated fund shall be invested as permit-
3 ted by section twelve of this article subject to the restrictions
4 and conditions contained in this section:

5 (1) At no time shall more than seventy-five percent of the
6 consolidated fund be invested in any bond, note, debenture,
7 commercial paper or other evidence of indebtedness of any
8 private corporation or association;

9 (2) At no time shall more than five percent of the consoli-
10 dated fund be invested in securities issued by a single private
11 corporation or association; and

12 (3) At no time shall less than fifteen percent of the consoli-
13 dated fund be invested in any direct obligation of or obligation
14 guaranteed as to the payment of both principal and interest by
15 the United States of America.

§12-6-11. Standard of care.

1 Any investments made under this article shall be made in
2 accordance with the provisions of the “Uniform Prudent
3 Investor Act” codified as article six-c, chapter forty-four of this
4 code and is further subject to the following requirements:

5 (a) Trustees shall discharge their duties with respect to the
6 401(a) plans for the exclusive purpose of providing benefits to
7 participants and their beneficiaries;

8 (b) Trustees shall diversify fund investment so as to
9 minimize the risk of large losses unless, under the circum-
10 stances, it is clearly prudent not to do so;

11 (c) Trustees shall defray reasonable expenses of investing
12 and operating the funds under management; and

13 (d) Trustees shall discharge their duties in accordance with
14 the documents and instruments governing the trusts or other
15 funds under management insofar as the documents and instru-
16 ments are consistent with the provisions of this article.

17 (e) The duties of the board apply only with respect to those
18 assets deposited with or otherwise held by it.

§12-6-12. Investment restrictions.

1 (a) The board shall hold in equity investments no more
2 than sixty percent of the assets managed by the board and no
3 more than sixty percent of the assets of any individual partici-
4 pant plan or the consolidated fund.

5 (b) The board shall hold in international securities no more
6 than twenty percent of the assets managed by the board and no
7 more than twenty percent of the assets of any individual
8 participant plan or the consolidated fund.

9 (c) The board may not at the time of purchase hold more
10 than five percent of the assets managed by the board in the
11 equity securities of any single company or association: *Pro-*
12 *vided*, That if a company or association has a market weighting
13 of greater than five percent in the Standard & Poor's 500 index
14 of companies, the board may hold securities of that equity equal
15 to its market weighting.

16 (d) The board shall at all times limit its asset allocation and
17 types of securities to the following:

18 (1) The board may not hold more than twenty percent of the
19 aggregate participant plan assets in commercial paper. Any
20 commercial paper at the time of its acquisition shall be in one
21 of the two highest rating categories by an agency nationally
22 known for rating commercial paper;

23 (2) At no time shall the board hold more than seventy-five
24 percent of the assets managed by the board in corporate debt.
25 Any corporate debt security at the time of its acquisition shall
26 be rated in one of the six highest rating categories by a nation-
27 ally recognized rating agency; and

28 (3) No security may be purchased by the board unless the
29 type of security is on a list approved by the board. The board
30 may modify the securities list at any time and shall give notice

31 of that action pursuant to subsection (g), section three of this
32 article and shall review the list at its annual meeting.

33 (e) Notwithstanding the investment limitations set forth in
34 this section, it is recognized that the assets managed by the
35 board, or the assets of the consolidated fund or participant
36 plans, whether considered in the aggregate or individually, may
37 temporarily exceed the investment limitations in this section
38 due to market appreciation, depreciation and rebalancing
39 limitations. Accordingly, the limitations on investments set
40 forth in this section shall not be considered to have been
41 violated if the board rebalances the assets it manages or the
42 assets of the consolidated fund or participant plans, whichever
43 is applicable, to comply with the limitations set forth in this
44 section at least once every six months based upon the latest
45 available market information and any other reliable market data
46 that the board considers advisable to take into consideration.

47 (f) The board, at the annual meeting provided for in
48 subsection (h), section three of this article, shall review,
49 establish and modify, if necessary, the investment objectives of
50 the individual participant plans as incorporated in the invest-
51 ment policy statements of the respective trusts so as to provide
52 for the financial security of the trust funds giving consideration
53 to the following:

54 (1) Preservation of capital;

55 (2) Diversification;

56 (3) Risk tolerance;

57 (4) Rate of return;

58 (5) Stability;

59 (6) Turnover;

60 (7) Liquidity; and

61 (8) Reasonable cost of fees.

CHAPTER 172

(S. B. 491 — By Senators Wooton, Bailey and Sharpe)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article five, chapter twenty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to changing the name of Pinecrest hospital to Jackie Withrow hospital, contingent upon receipt of funds from the department of health and human resources; authorizing the department of health and human resources to provide funding for the name change; and establishing effective dates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. JACKIE WITHROW HOSPITAL.

§26-5-1. Continuation; management; superintendent; qualifications of superintendent; division of fiscal, administrative and clinical duties; certain persons exempted from qualification requirements.

- 1 (a) The tuberculosis sanitarium heretofore established at
- 2 Beckley, for the care and treatment of persons afflicted with
- 3 tuberculosis, shall be continued and shall be known as the
- 4 Jackie Withrow hospital, and shall be managed, directed and
- 5 controlled as prescribed in article one, chapter twenty-five and

6 in section eight, article one, chapter sixteen of this code:
7 *Provided*, That the name change shall not become effective
8 until ninety days after the department of health and human
9 resources has provided to the hospital and the hospital has
10 received an additional one hundred thousand dollars over and
11 above the total dollar amount provided to the hospital from the
12 state from all sources for the fiscal year ending the thirtieth day
13 of June, two thousand one. The one hundred thousand dollars
14 shall be used by the hospital to offset the additional expenses
15 incurred in changing the name of the hospital, including, but not
16 limited to, software changes, printing costs for documents and
17 stationery, change of name on medicaid certificate, change of
18 signs and equipment which stamps the name of the hospital and
19 the cost of a plaque, bust and other expenses associated with the
20 change of name. The department of health and human resources
21 shall provide this money to the hospital in one lump sum within
22 one hundred eighty days from the effective date of the amend-
23 ments made to this section in the two thousand one regular
24 session of the Legislature or the name change contemplated
25 herein shall not become effective. The chief executive officer
26 of the hospital shall be the superintendent, who must be a
27 college graduate and have a minimum of two years' experience
28 in either hospital administration, health services administration
29 or business administration with broad knowledge of accounting,
30 purchasing and personnel practices as related to the rendition of
31 health and health related services.

32 (b) A superintendent is the person having the fiscal respon-
33 sibility of the hospital and the authority to manage and adminis-
34 ter the financial, business and personnel affairs of the hospital.

35 A clinical director is the person having the responsibility
36 for decisions involving clinical and medical treatment of
37 patients, and who shall be a duly qualified physician licensed to
38 practice medicine in the state of West Virginia.

39 (c) The provisions of this section relating to the qualifica-
40 tion of persons eligible to serve as superintendent shall not
41 apply to any person serving in the capacity of business manager
42 on the effective date hereof, and who has served in that capacity
43 for at least six consecutive months next preceding the effective
44 date.

CHAPTER 173

(Com. Sub. for S. B. 404 — By Senators
McCabe, Anderson and Unger)

[Passed April 11, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four, five and fourteen, article seven, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the jobs investment trust fund and board; changing board composition; defining participation in board meetings; and exempting new millennium fund from certain requirements.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. JOBS INVESTMENT TRUST FUND.

§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.

§12-7-14. Exemption from certain requirements; audit.

§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 higher education policy commission or his or
9 her designee; the executive director of the West Virginia
10 housing development fund; and the executive director of the
11 West Virginia development office. One member shall be
12 appointed by the governor from a list of two names submitted
13 by the board of directors of the housing development fund. One
14 member shall be appointed by the governor from a list of two
15 names submitted by the commissioner of the division of
16 tourism. The other six members shall be appointed from the
17 general public by the governor. Of the members of the general
18 public appointed by the governor, one shall be an attorney with
19 experience in finance and investment matters, one shall be a
20 certified public accountant, one shall be a representative of
21 labor, one shall be experienced or involved in innovative
22 business development, two shall be present or past executive
23 officers of companies listed on a major stock exchange or large
24 privately held companies: *Provided*, That all appointments
25 made pursuant to the provisions of this article shall be by and
26 with the advice and consent of the Senate.

27 (c) A vacancy on the board shall be filled by appointment
28 by the governor for the unexpired term in the same manner as
29 the original appointment. Any person appointed to fill a
30 vacancy serves only for the unexpired term.

31 (d) The governor may remove any appointed member in
32 case of incompetency, neglect of duty, moral turpitude or
33 malfeasance in office and the governor may declare the office
34 vacant and fill the vacancy as provided in other cases of
35 vacancy.

36 (e) The chairman of the board shall be elected by the board
37 from among the members of the board.

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 or participating by
41 such other means as described in subsection (g) of this section,
42 but in no event fewer than six of the members serving on the
43 board.

44 (g) Members of the board may participate in a meeting of
45 the board by means of conference telephone or similar commu-
46 nication equipment by means of which all persons participating
47 in the meeting can hear each other and participation in a board
48 meeting pursuant to this subsection shall constitute presence in
49 person at such meeting.

50 (h) The members of the board, including the chairman, may
51 receive no compensation for their services as members of the
52 board but are entitled to their reasonable and necessary ex-
53 penses actually incurred in discharging their duties under this
54 article.

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

57 (j) The terms of the board members appointed by the
58 governor first taking office on or after the one thousand nine
59 hundred ninety-two effective date of the jobs investment trust
60 act expired as designated by the governor at the time of the
61 nomination, two at the end of the first year, two at the end of

62 the second year, two at the end of the third year and two at the
63 end of the fourth year. These original appointments were for,
64 and each subsequent appointment was and shall be for, a full
65 four-year term. Any member whose term has expired serves
66 until his or her successor has been duly appointed and qualified.
67 Any member is eligible for reappointment.

68 (k) Additionally, one member of the West Virginia House
69 of Delegates and one member of the West Virginia Senate shall
70 serve as advisory members of the jobs investment trust board
71 and, as advisory members, shall be ex officio, nonvoting
72 advisory members. The governor shall appoint the two legisla-
73 tive ex officio advisory members who shall serve for four years
74 or such shorter time as he or she continues to be a West
75 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.**

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

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

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

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

21 (e) Upon the affirmative vote of at least a majority of those
22 members in attendance or participating by such other means as
23 described in subsection (g), section four of this article in a
24 meeting of the board, but in no event fewer than six of the
25 members serving on the board, the board may approve any
26 action to be taken and authorize the executive director for and
27 on behalf of the board to execute and deliver all instruments,
28 agreements or other documents that are required or are reason-
29 ably necessary to effectuate the decisions or acts of the board.

30 (f) The West Virginia housing development fund shall
31 provide office space and staff support services for the director
32 and the board shall act as fiscal agent for the board and, as such,
33 shall provide accounting services for the board, invest all funds
34 as directed by the board, service all investment activities of the
35 board and shall make the disbursements of all funds as directed
36 by the board, for which the West Virginia housing development
37 fund shall be reasonably compensated as determined by the
38 board.

39 (g) The board and the executive director shall involve
40 students and faculty members of state institutions of higher
41 education in the board's activities in order to enhance the
42 opportunities at the institutions for learning and for participa-
43 tion in the board's investment activities and in the economic
44 development of the state, whether in research, financial
45 analysis, management participation or in such other ways as the

46 board and the executive director may, in their discretion, find
47 appropriate.

§12-7-14. Exemption from certain requirements; audit.

1 In order to provide excellent investment opportunities and
2 to effectively implement the new millennium fund, the invest-
3 ment activity and the new millennium fund activity provided by
4 this article shall be exempt from the bidding and public sale
5 requirements, from the approval of contractual agreements by
6 the department of finance and administration or the attorney
7 general and from the requirements of chapter five-a of this
8 code. The transactions provided by this article shall be subject
9 to an annual audit by an independent firm of certified public
10 accountants.

CHAPTER 174

**(Com. Sub. for S. B. 103 — By Senators Hunter, Kessler, Edgell,
Bowman, Love, Rowe, Burnette, Redd, McKenzie, Bailey, Chafin,
Craig, Jackson, Plymale, Snyder, Prezioso, McCabe, Unger,
Anderson, Helmick, Minard, Sharpe, Ross, Mitchell,
Caldwell and Tomblin, Mr. President)**

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article one-c, relating to the West Virginia jobs act; requiring a certain percentage of employment from the local labor market for construction projects let by certain public authorities; requiring public authorities to submit informa-

tion for a legislative audit; providing civil penalties; and establishing effective dates for the article.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1C. EMPLOYMENT OF RESIDENTS OF LABOR MARKET.

§21-1C-1. Short title.

§21-1C-2. Definitions.

§21-1C-3. Legislative findings; statement of policy.

§21-1C-4. Local labor market quota on public improvement construction projects; waiver certificates.

§21-1C-5. Applicability and scope of article; reporting requirements.

§21-1C-6. Penalties for violation of article.

§21-1C-7. Effective date.

§21-1C-1. Short title.

1 This article shall be called the “West Virginia Jobs Act”.

§21-1C-2. Definitions.

1 As used in this article:

2 (1) The term “construction project” means any construc-
3 tion, reconstruction, improvement, enlargement, painting,
4 decorating or repair of any public improvement let to contract
5 in an amount equal to or greater than five hundred thousand
6 dollars. The term “construction project” does not include
7 temporary or emergency repairs;

8 (2)(A) The term “employee” means any person hired or
9 permitted to perform hourly work for wages by a person, firm
10 or corporation in the construction industry;

11 (B) The term “employee” does not include:

12 (i) Bona fide employees of a public authority or individuals
13 engaged in making temporary or emergency repairs;

14 (ii) Bona fide independent contractors; or

15 (iii) Salaried supervisory personnel necessary to assure
16 efficient execution of the employee’s work;

17 (3) The term “employer” means any person, firm or
18 corporation employing one or more employees on any public
19 improvement and includes all contractors and subcontractors;

20 (4) The term “local labor market” means every county in
21 West Virginia and all counties bordering West Virginia that fall
22 within seventy-five miles of the border of West Virginia;

23 (5) The term “public authority” means any officer, board,
24 commission or agency of the state of West Virginia, excluding
25 counties and municipalities. Further, the economic development
26 authority, infrastructure and jobs development council and
27 school building authority shall be required to comply with the
28 provisions of this article for loans, grants or bonds provided for
29 public improvement construction projects: *Provided*, That any
30 project initiated by a county or local economic development
31 authority and which is under the effective management of the
32 county or local economic development authority shall not be
33 included in this requirement;

34 (6) The term “public improvement” includes the construc-
35 tion of all buildings, roads, highways, bridges, streets, alleys,
36 sewers, ditches, sewage disposal plants, waterworks, airports
37 and all other structures that may be let to contract by a public
38 authority, excluding improvements funded, in whole or in part,
39 by federal funds.

§21-1C-3. Legislative findings; statement of policy.

1 The Legislature finds that the rate of unemployment in this
2 state is significantly higher than that of most other states and
3 that a majority of West Virginia counties are designated as
4 labor surplus areas by the United States department of labor.

5 The Legislature finds that the employment of persons from
6 outside the local labor market on public improvement construc-
7 tion projects contracted for and subsidized by the taxpayers of
8 the state contributes significantly to the rate of unemployment
9 and the low per capita income among qualified state residents
10 who would otherwise be hired for these jobs.

11 Therefore, the Legislature declares that residents of local
12 labor markets should be employed and given preference in
13 hiring for the construction of public improvement projects
14 which depend, in whole or in part, on state taxpayer funding.

§21-1C-4. Local labor market quota on public improvement construction projects; waiver certificates.

1 (a) Employers shall hire at least seventy-five percent of
2 employees for public improvement construction projects from
3 the local labor market, to be rounded off, with at least two
4 employees from outside the local labor market permissible for
5 each employer per project. Employees shall have resided in the
6 local labor market for at least six months prior to their applica-
7 tion for employment.

8 (b) Any employer unable to employ the minimum number
9 of employees from the local labor market shall inform the
10 nearest office of the bureau of employment programs' division
11 of employment services of the number of qualified employees
12 needed and provide a job description of the positions to be
13 filled.

14 (c) If, within three business days following the placing of
15 a job order, the division is unable to refer any qualified job
16 applicants to the employer or refers less qualified job applicants
17 than the number requested, then the division shall issue a
18 waiver to the employer stating the unavailability of applicant
19 and shall permit the employer to fill any positions covered by
20 the waiver from outside the local labor market. The waiver shall
21 be either oral or in writing and shall be issued within the
22 prescribed three days. A waiver certificate shall be sent to both
23 the employer for its permanent project records and to the public
24 authority.

§21-1C-5. Applicability and scope of article; reporting requirements.

1 (a) This article applies to expenditures for construction
2 projects by any public authority for public improvements as
3 defined by this article.

4 (b) For public improvement projects let pursuant to this
5 article, the public authority shall file with the division of labor
6 copies of the waiver certificates and certified payrolls, pursuant
7 to article five-a of this chapter, or other comparable documents
8 that include the number of employees, the county and state
9 wherein the employees reside and their occupation.

10 (c) The division of labor shall compile the information
11 required by this section and submit it to the joint committee on
12 government and finance by the fifteenth day of October, two
13 thousand two, for a legislative audit to be prepared for the
14 December, two thousand two, interim session.

15 (d) Each public authority has the duty to implement the
16 reporting requirements of this article. Every public improve-
17 ment contract or subcontract let by a public authority shall
18 contain provisions conforming to the requirements of this
19 article.

20 (e) The division of labor is authorized to establish
21 procedures for the efficient collection of data, collection of civil
22 penalties prescribed in section six and transmittal of data to the
23 joint committee on government and finance.

§21-1C-6. Penalties for violation of article.

1 Any employer who violates any provision of this article is
2 subject to a civil penalty of one hundred dollars per day of
3 violation.

§21-1C-7. Effective date.

1 This article is effective from the first day of September, two
2 thousand one, through the fifteenth day of March, two thousand
3 three.

CHAPTER 175

(H. B. 2331 — By Delegates Warner and Mezzatesta)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article five-a, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the attachment of wage rates to construction contracts.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5A. WAGES FOR CONSTRUCTION OF PUBLIC IMPROVEMENTS.

§21-5A-3. Fair minimum rate of wages; determination; filing; schedule of wages part of specifications.

1 Any public authority authorized to let to contract the
2 construction of a public improvement, shall, before advertising
3 for bids for the construction thereof, ascertain from the state
4 commissioner of labor, the fair minimum rate of wages,
5 including fair minimum overtime and holiday pay, to be paid by
6 the successful bidder to the laborers, workmen or mechanics in
7 the various branches or classes of the construction to be
8 performed; and such schedule of wages shall be made a part of
9 the specifications for the construction and shall be published in
10 an electronic or other medium and incorporated in the bidding
11 blanks by reference when approved by the commissioner of
12 labor where the construction is to be performed by contract.
13 The "fair minimum rate of wages," for the intents and purposes
14 of this article, shall be the rate of wages paid in the locality in
15 this state as hereinbefore defined to the majority of workmen,
16 laborers or mechanics in the same trade or occupation in the
17 construction industry. The commissioner of labor or a member
18 of his or her department designated by him or her shall
19 assemble the data as to fair minimum wage rates and shall file
20 wage rates. Rates shall be established and filed as hereinafter
21 provided on the first day of January of each year. These rates
22 shall prevail as the minimum wage rate on all public
23 improvements on which bids are asked during the year
24 beginning with the date when such new rates are filed and until
25 the new rates are filed, the rates for the preceding year shall
26 remain in effect: *Provided*, That such rates shall not remain in
27 effect for a period longer than fifteen months from the date they
28 are published, but, this provision shall not affect construction of
29 a public improvement then underway.

CHAPTER 176

(H. B. 3234 — By Delegates Michael, Doyle,
Proudfoot, Keener and Fletcher)

[Passed April 5, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article five-e, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to extending the effective date of gender-related employment provisions of said code.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5E. EQUAL PAY FOR EQUAL WORK FOR STATE EMPLOYEES.

§21-5E-6. Commission's duties; promulgation of rules.

1 (a) The equal pay commission shall study both the
2 methodology and funding for the implementation of a gender
3 discrimination prohibition and shall prepare reports for
4 submission to the Legislature which include:

5 (1) An analysis of state job descriptions which measures the
6 inherent skill, effort, responsibility and working conditions of
7 various jobs and classifications; and

8 (2) A review of similar efforts to eliminate gender-based
9 wage differentials implemented by other governmental entities
10 in this and other states.

11 (b) The commission shall submit an initial report with
12 recommendations for implementation of a gender
13 discrimination prohibition to the joint committee on
14 government and finance not later than the first day of July, two
15 thousand, and shall submit status reports annually thereafter.

16 (c) Based upon the findings and recommendations in its
17 report, the commission may propose legislative rules for
18 promulgation in accordance with article three, chapter twenty-
19 nine-a of this code to implement the provisions of this article.

20 (d) Notwithstanding any other provision of this article, if no
21 legislative rules are approved for promulgation by the
22 Legislature pursuant to this article prior to the first day of July,
23 two thousand two, then the provisions of sections three and four
24 of this article shall become effective on such date.

CHAPTER 177

**(Com. Sub. for H. B. 2801 — By Delegates Tucker, Staton,
Marshall, Varner, Caputo, Kuhn and Hubbard)**

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article eleven, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the contractors' licensing board; providing for an additional cause for disciplinary

action; and removing obsolete language concerning disciplinary hearing requirements provided by legislative rule.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.

§21-11-14. Disciplinary powers of the board.

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

3 (1) Permanently revoke a license;

4 (2) Suspend a license for a specified period;

5 (3) Censure or reprimand a licensee;

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

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

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

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

19 (c) The board may reinstate the suspended or revoked
20 license of a person, if, upon a hearing, the board finds and
21 determines that the person is able to practice with skill and
22 safety.

23 (d) The board may accept the voluntary surrender of a
24 license: *Provided*, That the license may not be reissued unless
25 the board determines that the licensee is competent to resume
26 practice and the licensee pays the appropriate renewal fee.

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

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

39 (g) The following are causes for disciplinary action:

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

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

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

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

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

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

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

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

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

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

80 (11) Performing work which is not commensurate with a
81 general standard of the specific classification of contractor or
82 which is below a building or construction code adopted by the
83 municipality or county in which the work is performed; or

84 (12) Knowingly employing a person or persons who do not
85 have the legal right to be employed in the United States.

86 (h) In all disciplinary hearings the board has the burden of
87 proof as to all matters in contention. No disciplinary action may
88 be taken by the board except on the affirmative vote of at least
89 six members thereof. Other than as specifically set out herein,
90 the board has no power or authority to impose or assess
91 damages.

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

CHAPTER 178

**(H. B. 2847 — By Delegates Douglas, Kuhn, Butcher,
Caputo, Flanigan, Prunty and Stalnaker)**

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-e, all relating to authorizing the superintendent of state police to establish and operate a post exchange at the state police academy; establishing operation procedures; creating special account; limiting the use of proceeds; establishing reporting requirements; authorizing the proposal of rules; and providing for termination.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2E. STATE POLICE ACADEMY POST EXCHANGE.

§15-2E-1. Definitions.

§15-2E-2. Post exchange authorized.

§15-2E-3. Operation of post exchange.

§15-2E-4. Creation of special account.

§15-2E-5. Use of funds from post exchange revenue.

§15-2E-6. Post exchange reporting requirements.

§15-2E-7. Legislative rules.

§15-2E-8. Termination date.

§15-2E-1. Definitions.

1 As used in this article:

2 (1) "Certain limited items" means personal grooming and
3 hygiene products, food and beverages, convenience items, and
4 items bearing the state police emblem or other insignia that are
5 necessary for training purposes.

6 (2) "Post exchange" means a particular area located at the
7 state police academy where certain limited items are offered for
8 sale.

9 (3) “State police academy” means the law-enforcement
10 training facility established pursuant to section three, article two
11 of this chapter located at Institute, West Virginia, or an
12 additional or successor location.

13 (4) “Superintendent” means the superintendent of state
14 police as established in section two, article two of this chapter.

15 (5) “Training” means and includes instruction for members
16 of the state police, county sheriffs and deputies, municipal
17 police, law-enforcement officers employed by the division of
18 natural resources, and other persons employed by state or local
19 governmental units charged with enforcing state or local laws,
20 regardless of the length of instruction.

§15-2E-2. Post exchange authorized.

1 Notwithstanding any other provision of this code to the
2 contrary, the superintendent is authorized to establish and
3 operate a post exchange at the state police academy.

§15-2E-3. Operation of post exchange.

1 (a) The state police post exchange may offer certain limited
2 items for sale to persons attending training at the state police
3 academy, to persons actively employed by the state police and
4 to persons retired from employment with the state police.

5 (b) The post exchange may only be open at such times as
6 may be established by the superintendent.

7 (c) The superintendent shall appoint state police employees
8 to supervise the operation of the post exchange.

9 (d) The superintendent shall establish a system of
10 bookkeeping, accounting and auditing procedures for the proper

11 handling of funds derived from the operation of the post
12 exchange.

13 (e) The superintendent shall post a sign in the post
14 exchange which states: "In accordance with the provisions of
15 section seventeen, article two, chapter fifteen of the code, it is
16 unlawful for every person who is not a member of the state
17 police to wear or use the state police uniform, badge, emblem
18 or other insignia. Any person, who is not a member of the state
19 police, who wears or uses the state police uniform, badge,
20 emblem or other insignia shall be guilty of a misdemeanor and,
21 upon conviction thereof, shall be fined or jailed or both fined
22 and jailed".

§15-2E-4. Creation of special account.

1 All moneys collected from operation of the post exchange
2 and any money collected from vending machine sales made
3 pursuant to section three-d, article ten-g, chapter eighteen of
4 this code, shall be deposited in a special account in the state
5 treasury to be known as the "state police academy post
6 exchange". Expenditures from the fund must be for the
7 purposes set forth in section five of this article and are not
8 authorized from collections but are to be made only in
9 accordance with appropriation by the Legislature and in
10 accordance with the provisions of article three, chapter twelve
11 of this code and upon fulfillment of the provisions of article
12 two, chapter five-a of this code: *Provided*, That for the fiscal
13 year ending the thirtieth day of June, two thousand two,
14 expenditures are authorized from collections rather than
15 pursuant to appropriation by the Legislature.

§15-2E-5. Use of funds from post exchange revenue.

1 All proceeds derived from the operation of the post
2 exchange and any money derived from the operation of vending
3 machines, after the payment of operating expenses,

4 notwithstanding any provision of this code to the contrary, must
5 be used exclusively for the publication of the cadet class
6 yearbook and for repair and alteration of the state police
7 academy.

§15-2E-6. Post exchange reporting requirements.

1 The superintendent shall complete and submit to the
2 governor and the Legislature by the first day of each regular
3 legislative session a report on the amount of funds derived from
4 the operation of the post exchange during the previous fiscal
5 year and how those funds were used.

§15-2E-7. Legislative rules.

1 The superintendent may propose rules for legislative
2 approval in accordance with the provisions of article three,
3 chapter twenty-nine-a of this code relating to the establishment
4 and operation of the post exchange.

§15-2E-8. Termination date.

1 The state police academy post exchange provided for in this
2 article shall terminate pursuant to the provisions of article ten,
3 chapter four of this code, on the first day of July, two thousand
4 six, unless continued pursuant to the provisions of that article
5 by legislation enacted prior to the termination date.

CHAPTER 179

**(Com. Sub. for H. B. 2587 — By Mr. Speaker, Mr. Kiss, and Delegates
Staton, Amores, Coleman, Warner, Douglas and Stemple)**

[Passed April 3, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article ten, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five; and to amend and reenact section six, article seven, chapter sixty-one of said code, all relating to permitting federal law-enforcement officers to assist state, county and municipal law-enforcement officers in enforcing state laws on request or if a felony is committed in the officer's presence; and permitting federal law-enforcement officers to carry weapons off duty.

Be it enacted by the Legislature of West Virginia:

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

Chapter

15. Public Safety.

61. Crimes and Their Punishment.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 10. COOPERATION BETWEEN LAW-ENFORCEMENT AGENCIES.

§15-10-5. Federal officers' peace-keeping authority.

1 (a) Notwithstanding any provision of this code to the
2 contrary, any person who is employed by the United States
3 government as a federal law-enforcement officer and is listed
4 in subsection (b) of this section, has the same authority to
5 enforce the laws of this state, except state or local traffic laws
6 or parking ordinances, as that authority granted to state or local
7 law-enforcement officers, if one or more of the following
8 circumstances exist:

9 (1) The federal law-enforcement officer is requested to
10 provide temporary assistance by the head of a state or local law-
11 enforcement agency or the designee of the head of the agency
12 and that request is within the state or local law-enforcement
13 agency's scope of authority and jurisdiction and is in writing:
14 *Provided*, That the request does not need to be in writing if an
15 emergency situation exists involving the imminent risk of loss
16 of life or serious bodily injury;

17 (2) The federal law-enforcement officer is requested by a
18 state or local law-enforcement officer to provide the officer
19 temporary assistance when the state or local law-enforcement
20 officer is acting within the scope of the officer's authority and
21 jurisdiction and where exigent circumstances exist; or

22 (3) A felony is committed in the federal law-enforcement
23 officer's presence or under circumstances indicating a felony
24 has just occurred.

25 (b) This section applies to the following persons who are
26 employed as full-time federal law-enforcement officers by the
27 United States government and who are authorized to carry
28 firearms while performing their duties:

29 (1) Federal bureau of investigation special agents;

30 (2) Drug enforcement administration special agents;

31 (3) United States marshal's service marshals and deputy
32 marshals;

33 (4) United States postal service inspectors;

34 (5) Internal revenue service special agents;

35 (6) United States secret service special agents;

36 (7) Bureau of alcohol, tobacco, and firearms special agents;

37 (8) Police officers employed pursuant to 40 U.S.C. §§318
38 and 490 at the federal bureau of investigation's criminal justice
39 information services division facility located within this state;
40 and

41 (9) Law enforcement commissioned rangers of the national
42 park service.

43 (c) Any person acting under the authority granted pursuant
44 to this section:

45 (1) Has the same authority and is subject to the same
46 exemptions and exceptions to this code as a state or local law-
47 enforcement officer;

48 (2) Is not an officer, employee, or agent of any state or local
49 law-enforcement agency;

50 (3) May not initiate or conduct an independent investigation
51 into an alleged violation of any provision of this code except to
52 the extent necessary to preserve evidence or testimony at risk
53 of loss immediately following an occurrence described in
54 subdivision (3), subsection (a) of this section;

55 (4) Is subject to 28 U.S.C. §1346, the Federal Tort Claims
56 Act; and

57 (5) Has the same immunities from liability as a state or
58 local law-enforcement officer.

59 (d) For purposes of this section, a state or local law-
60 enforcement officer means any duly authorized member of a
61 law-enforcement agency who is authorized to maintain public
62 peace and order, prevent and detect crime, make arrests and
63 enforce the laws of the state or any county or municipality

64 thereof, other than parking ordinances, and includes those
65 persons employed as campus police officers at state institutions
66 of higher education in accordance with the provisions of section
67 five, article four, chapter eighteen-b of this code, although those
68 institutions may not be considered law-enforcement agencies.
69 The term also includes those persons employed as rangers by
70 the Hatfield-McCoy regional recreation authority in accordance
71 with the provisions of section six, article fourteen, chapter
72 twenty of this code, although the authority may not be
73 considered a law-enforcement agency.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 7. DANGEROUS WEAPONS.

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

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

3 (1) Any person carrying a deadly weapon upon his or her
4 own premises; nor shall anything herein prevent a person from
5 carrying any firearm, unloaded, from the place of purchase to
6 his or her home, residence or place of business or to a place of
7 repair and back to his or her home, residence or place of
8 business, nor shall anything herein prohibit a person from
9 possessing a firearm while hunting in a lawful manner or while
10 traveling from his or her home, residence or place of business
11 to a hunting site and returning to his or her home, residence or
12 place of business;

13 (2) Any person who is a member of a properly organized
14 target-shooting club authorized by law to obtain firearms by
15 purchase or requisition from this state, or from the United
16 States for the purpose of target practice, from carrying any

***Clerk's Note:** This section was also amended by S. B. 490 (Chapter 138), which
passed subsequent to this act.

17 pistol, as defined in this article, unloaded, from his or her home,
18 residence or place of business to a place of target practice and
19 from any place of target practice back to his or her home,
20 residence or place of business, for using any such weapon at a
21 place of target practice in training and improving his or her skill
22 in the use of the weapons;

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

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

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

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

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

39 (8) Any resident of another state who has been issued a
40 license to carry a concealed weapon by a state or a political
41 subdivision which has entered into a reciprocity agreement with
42 this state shall be exempt from the licensing requirements of
43 section four of this article. The governor may execute
44 reciprocity agreements on behalf of the state of West Virginia
45 with states or political subdivisions which have similar gun
46 permitting laws and which recognize and honor West Virginia
47 licenses issued pursuant to section four of this article;

48 (9) Any federal law-enforcement officer or federal police
49 officer authorized to carry a weapon in the performance of the
50 officer's duty.

CHAPTER 180

(Com. Sub. for H. B. 2540 — By Delegates C. White,
Yeager, Marshall, Perry, Caputo, Smirl and Azinger)

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article twenty-nine, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring an employer to provide certain notices and consequences to a newly hired law-enforcement officer; providing for consequences to an employer if an employer fails to provide certain notices and consequences to a newly hired law-enforcement officer; and providing for circumstances where a law-enforcement officer may appeal their termination to the governor's committee.

Be it enacted by the Legislature of West Virginia:

That section five, article twenty-nine, 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 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-5. Certification requirements.

1 (a) Except as provided in subsections (b) and (g) below, no
2 person may be employed as a law-enforcement officer by any

3 West Virginia law-enforcement agency or by any state
4 institution of higher education on or after the effective date of
5 this article unless the person is certified, or is certifiable in one
6 of the manners specified in subsections (c) through (e) below,
7 by the governor's committee as having met the minimum entry
8 level law-enforcement qualification and training program
9 requirements promulgated pursuant to this article.

10 (b) Except as provided in subsection (g) below, a person
11 who is not certified, or certifiable in one of the manners
12 specified in subsections (c) through (e) below, may be
13 conditionally employed as a law-enforcement officer until
14 certified: *Provided*, That within ninety calendar days of the
15 commencement of employment or the effective date of this
16 article if the person is already employed on the effective date,
17 he or she makes a written application to attend an approved
18 law-enforcement training academy. The person's employer
19 shall provide notice, in writing, of the ninety-day deadline to
20 file a written application to the academy within thirty calendar
21 days of that person's commencement of employment. The
22 employer shall provide full disclosure as to the consequences of
23 failing to file a timely written application. The academy shall
24 notify the applicant in writing of the receipt of the application
25 and of the tentative date of the applicant's enrollment. Any
26 applicant who, as the result of extenuating circumstances
27 acceptable to his or her law-enforcement official, is unable to
28 attend the scheduled training program to which he or she was
29 admitted may reapply and shall be admitted to the next
30 regularly scheduled training program. An applicant who
31 satisfactorily completes the program shall, within thirty days of
32 completion, make written application to the governor's
33 committee requesting certification as having met the minimum
34 entry level law-enforcement qualification and training program
35 requirements. Upon determining that an applicant has met the
36 requirements for certification, the governor's committee shall
37 forward to the applicant documentation of certification. An

38 applicant who fails to complete the training program to which
39 he or she is first admitted, or was admitted upon reapplication,
40 may not be certified by the governor's committee.

41 (c) Any person who is employed as a law-enforcement
42 officer on the effective date of this article and is a graduate of
43 the West Virginia basic police training course, the West
44 Virginia state police cadet training program, or other approved
45 law-enforcement training academy, is certifiable as having met
46 the minimum entry law-enforcement training program
47 requirements and is exempt from the requirement of attending
48 a law-enforcement training academy. To receive certification,
49 the person shall make written application within ninety calendar
50 days of the effective date of this article to the governor's
51 committee requesting certification. The governor's committee
52 shall review the applicant's relevant scholastic records and,
53 upon determining that the applicant has met the requirements
54 for certification, shall forward to the applicant documentation
55 of certification.

56 (d) Any person who is employed as a law-enforcement
57 officer on the effective date of this article and is not a graduate
58 of the West Virginia basic police training course, the West
59 Virginia state police cadet training program, or other approved
60 law-enforcement training academy, is certifiable as having met
61 the minimum entry level law-enforcement training program
62 requirements and is exempt from the requirement of attending
63 a law-enforcement training academy if the person has been
64 employed as a law-enforcement officer for a period of not less
65 than five consecutive years immediately preceding the date of
66 application for certification. To receive certification, the person
67 shall make written application within ninety calendar days
68 following the effective date of this article to the governor's
69 committee requesting certification. The application shall
70 include notarized statements as to the applicant's years of
71 employment as a law-enforcement officer. The governor's

72 committee shall review the application and, upon determining
73 that the applicant has met the requirements for certification,
74 shall forward to the applicant documentation of certification.

75 (e) Any person who begins employment on or after the
76 effective date of this article as a law-enforcement officer is
77 certifiable as having met the minimum entry level law-
78 enforcement training program requirements and is exempt from
79 attending a law-enforcement training academy if the person has
80 satisfactorily completed a course of instruction in law
81 enforcement equivalent to or exceeding the minimum
82 applicable law-enforcement training curricula promulgated by
83 the governor's committee. To receive certification, the person
84 shall make written application within ninety calendar days
85 following the commencement of employment to the governor's
86 committee requesting certification. The application shall
87 include a notarized statement of the applicant's satisfactory
88 completion of the course of instruction in law enforcement, a
89 notarized transcript of the applicant's relevant scholastic
90 records, and a notarized copy of the curriculum of the
91 completed course of instruction. The governor's committee
92 shall review the application and, if it finds the applicant has met
93 the requirements for certification shall forward to the applicant
94 documentation of certification.

95 (f) Any person who is employed as a law-enforcement
96 officer on or after the effective date of this article and fails to be
97 certified shall be automatically terminated and no further
98 emoluments shall be paid to such officer by his or her
99 employer. Any person terminated shall be entitled to reapply,
100 as a private citizen, to the subcommittee for training and
101 certification, and upon being certified may again be employed
102 as a law-enforcement officer in this state: *Provided*, That if a
103 person is terminated under this subsection because an
104 application was not timely filed to the academy, and the
105 person's employer failed to provide notice or disclosure to that

106 person as set forth in subsection (b) of this section, the
107 employer shall pay the full cost of attending the academy if the
108 person's application to the subcommittee as a private citizen is
109 subsequently approved.

110 (g) Nothing in this article may be construed as prohibiting
111 any governing body, civil service commission or chief
112 executive of any West Virginia law-enforcement agency from
113 requiring their law-enforcement officers to meet qualifications
114 and satisfactorily complete a course of law-enforcement
115 instruction which exceeds the minimum entry level law-
116 enforcement qualification and training curricula promulgated
117 by the governor's committee.

118 (h) The requirement of this section for qualification,
119 training and certification of law-enforcement officers shall not
120 be mandatory during the two years next succeeding the
121 effective date of this article for the law-enforcement officers of
122 a law-enforcement agency which employs a civil service system
123 for its law-enforcement personnel, nor shall such provisions be
124 mandatory during the five years next succeeding the effective
125 date of this article for law-enforcement officers of a law-
126 enforcement agency which does not employ a civil service
127 system for its law-enforcement personnel: *Provided*, That such
128 requirements shall be mandatory for all such law-enforcement
129 officers until their law-enforcement officials apply for their
130 exemption by submitting a written plan to the governor's
131 committee which will reasonably assure compliance of all law-
132 enforcement officers of their agencies within the applicable two
133 or five-year period of exemption.

134 (i) Any person aggrieved by a decision of the governor's
135 committee made pursuant to this article may contest such
136 decision in accordance with the provisions of article five,
137 chapter twenty-nine-a of this code.

138 (j) Any person terminated from employment for not filing
139 an application to the law-enforcement training academy within
140 ninety days after commencing employment as a law-
141 enforcement officer may appeal the termination to the
142 governor's committee for reconsideration on an individual
143 basis.

CHAPTER 181

**(S. B. 730 — By Senators Wooton, Burnette, Deem,
Facemyer, Kessler, Ross, Rowe and Snyder)**

[Passed April 12, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six hundred one, article twenty-seven, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring law-enforcement agencies to open an official investigation when a person is reported missing who had earlier been awarded a protective order or was otherwise protected by the protective provisions of a domestic violence protective order or where an affidavit is filed alleging domestic violence; requiring law-enforcement agencies to open an official investigation when a person submits an affidavit that a missing person had previously been threatened or abused by another person; and providing for a criminal penalty for submitting a false affidavit.

Be it enacted by the Legislature of West Virginia:

That section six hundred one, article twenty-seven, 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 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

PART 6. DISPOSITION OF DOMESTIC VIOLENCE ORDERS.

***§48-27-601. Filing of orders with law-enforcement agency; affidavit as to award of possession of real property; service of order on respondent.**

1 (a) Upon entry of an order pursuant to section 27-403 or
2 part 27-501, et seq., or an order entered pursuant to part 5-501,
3 et seq., granting relief provided for by this article, a copy of the
4 order shall, no later than the close of the next business day, be
5 transmitted by the court or the clerk of the court to a local
6 office of the municipal police, the county sheriff and the West
7 Virginia state police, where it shall be placed in a confidential
8 file, with access provided only to the law-enforcement agency
9 and the respondent named on the order.

10 (b) A sworn affidavit may be executed by a party who has
11 been awarded exclusive possession of the residence or
12 household, pursuant to an order entered pursuant to section 27-
13 503 and shall be delivered to such law-enforcement agencies
14 simultaneously with any order giving the party's consent for a
15 law-enforcement officer to enter the residence or household,
16 without a warrant, to enforce the protective order or temporary
17 order.

18 (c) Orders shall be promptly served upon the respondent.
19 Failure to serve a protective order on the respondent does not
20 stay the effect of a valid order if the respondent has actual
21 notice of the existence and contents of the order.

22 (d) Any law-enforcement agency in this state in possession
23 of or with notice of the existence of an order issued pursuant to

***Clerk's Note:** This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.

24 the provisions of sections 27-403 or 27-501 of this article or the
25 provisions of section 5-509 of this chapter which is in effect or
26 has been expired for thirty days or less that receives a report
27 that a person protected by such an order has been reported to be
28 missing shall immediately follow its procedures for
29 investigating missing persons. No agency or department policy
30 delaying the beginning of an investigation shall have any force
31 or effect.

32 (e) The provisions of subsection (d) of this section shall be
33 applied where a report of a missing person is made which is
34 accompanied by a sworn affidavit that the person alleged to be
35 missing was, at the time of his or her alleged disappearance,
36 being subjected to treatment which meets the definition of
37 domestic battery or assault set forth in section twenty-eight,
38 article two, chapter sixty-one of this code.

CHAPTER 182

**(Com. Sub. for S. B. 298 — By Senators Ross,
Anderson, Minard, Snyder, Unger and Minear)**

[Passed April 13, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article one, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact article two of said chapter, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; continuing rules previously promulgated by state agencies and boards; clarifying

legislative intent relating to promulgation or legislative rules; modifying method of disapproval of certain legislative rules; legislative mandate or authorization for the promulgation of certain legislative rules; 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 department of administration to promulgate a legislative rule relating to rules for selecting design-builders; authorizing department of administration and auditor to promulgate a legislative rule relating to state purchasing card program; authorizing consolidated public retirement board to promulgate a legislative rule relating to general provisions; authorizing consolidated public retirement board to promulgate a legislative rule relating to consolidated public retirement board benefit determination and appeal; authorizing consolidated public retirement board to promulgate a legislative rule relating to teachers' defined contribution system; authorizing consolidated public retirement board to promulgate a legislative rule relating to teachers' defined benefit plan; authorizing consolidated public retirement board to promulgate a legislative rule relating to public employees retirement system; and authorizing consolidated public retirement board to promulgate a legislative rule relating to service credit for accrued and unused sick and annual leave.

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

- 1. General Legislative Authorization.**
- 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
2 of the code of West Virginia, the Legislature expressly
3 authorizes the promulgation of the rules described in articles
4 two through eleven, inclusive, of this chapter, subject only to
5 the limitations set forth with respect to each such rule in the
6 section or sections of this chapter authorizing its promulgation.
7 Legislative rules promulgated pursuant to the provisions of
8 articles one through eleven, inclusive, of this chapter in effect
9 at the effective date of this section shall continue in full force
10 and effect until reauthorized in this chapter by legislative
11 enactment or until amended by emergency rule pursuant to the
12 provisions of article three, chapter twenty-nine-a of this code.

**ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF
ADMINISTRATION TO PROMULGATE
LEGISLATIVE RULES.**

§64-2-1. Department of administration and the auditor.

§64-2-2. Consolidated public retirement board.

§64-2-1. Department of administration and the auditor.

1 (a) The legislative rule filed in the state register on the
2 twenty-third day of March, two thousand, authorized under the
3 authority of section six, article twenty-two-a, chapter five of

4 this code, modified by the department of administration to meet
5 the objections of the legislative rule-making review committee
6 and refiled in the state register on the twenty-fourth day of
7 May, two thousand, relating to the department of administration
8 (rules for selecting design-builders under the design build
9 procurement act, 148 CSR 11), is authorized with the following
10 amendment:

11 “On page seven, section eleven, after subsection 11.8 by
12 inserting ‘11.9. For the purpose of this section, “awarding
13 authority” means the entity having authority to issue and sign
14 the purchase order for the construction or lease-purchase of the
15 project.’”

16 (b) The legislative rule filed in the state register on the tenth
17 day of August, two thousand, under the authority of section ten-
18 a, article three, chapter twelve of this code, modified by the
19 department of administration and the auditor to meet the
20 objections of the legislative rule-making review committee and
21 refiled in the state register on the twentieth day of September,
22 two thousand, relating to the department of administration and
23 the auditor (state purchasing card program, 148 CSR 7), is
24 authorized.

§64-2-2. Consolidated public retirement board.

1 (a) The legislative rule filed in the state register on the first
2 day of September, two thousand, under the authority of section
3 one, article ten-d, chapter five of this code, modified by the
4 consolidated public retirement board to meet the objections of
5 the legislative rule-making review committee and refiled in the
6 state register on the twenty-eighth day of November, two
7 thousand, relating to the consolidated public retirement board
8 (general provisions, 162 CSR 1), is authorized.

9 (b) The legislative rule filed in the state register on the first
10 day of September, two thousand, authorized under the authority

11 of section one, article ten-d, chapter five of this code, modified
12 by the consolidated public retirement board to meet the
13 objections of the legislative rule-making review committee and
14 refiled in the state register on the twenty-eighth day of
15 November, two thousand, relating to the consolidated public
16 retirement board (consolidated public retirement board benefit
17 determination and appeal, 162 CSR 2), is authorized.

18 (c) The legislative rule filed in the state register on the first
19 day of September, two thousand, under the authority of section
20 one, article ten-d, chapter five of this code, modified by the
21 consolidated public retirement board to meet the objections of
22 the legislative rule-making review committee and refiled in the
23 state register on the twenty-eighth day of November, two
24 thousand, relating to the consolidated public retirement board
25 (teachers' defined contribution system, 162 CSR 3), is
26 authorized.

27 (d) The legislative rule filed in the state register on the first
28 day of September, two thousand, under the authority of section
29 one, article ten-d, chapter five of this code, modified by the
30 consolidated public retirement board to meet the objections of
31 the legislative rule-making review committee and refiled in the
32 state register on the fourteenth day of December, two thousand,
33 relating to the consolidated public retirement board (teachers'
34 defined benefit plan, 162 CSR 4), is authorized.

35 (e) The legislative rule filed in the state register on the first
36 day of September, two thousand, under the authority of section
37 one, article ten-d, chapter five of this code, modified by the
38 consolidated public retirement board to meet the objections of
39 the legislative rule-making review committee and refiled in the
40 state register on the twenty-eighth day of November, two
41 thousand, relating to the consolidated public retirement board
42 (public employees retirement system, 162 CSR 5), is
43 authorized.

44 (f) The legislative rule filed in the state register on the first
45 day of September, two thousand, authorized under the authority
46 of section one, article ten-d, chapter five of this code, modified
47 by the consolidated public retirement board to meet the
48 objections of the legislative rule-making review committee and
49 refiled in the state register on the fourteenth day of December,
50 two thousand, relating to the consolidated public retirement
51 board (service credit for accrued and unused sick and annual
52 leave, 162 CSR 8), is disapproved.

CHAPTER 183

**(Com. Sub. for H. B. 2663 — By Delegates Mahan,
Wills, Cann, Kominar, Faircloth and Riggs)**

[Passed April 14, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact 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; authorizing the division of environmental protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants pursuant to 40 CFR Part 61; authorizing the division of environmental protection to promulgate a legislative rule relating to standards of performance for new stationary sources pursuant to 40 CFR Part 60; authorizing the division of environmental protection to promulgate a legislative rule relating to the prevention and control of emissions from municipal solid waste landfills; to authorizing the division of environmental protection to promulgate a legislative rule relating to requirements for operating permits; authorizing the division of environmental protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants for source categories pursuant to 40 CFR Part 63; authorizing the division of environmental protection to promulgate a legislative rule relating to oil and gas wells and other wells; 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 underground storage tanks; authorizing the solid waste management board to promulgate a legislative rule relating to the developing, updating and amending of comprehensive litter and solid waste control plans; authorizing the solid waste management board to promulgate a legislative rule relating to the development of commercial and solid waste facility siting plans; authorizing the division of environmental protection to promulgate a legislative rule relating to the NO_x budget trading program as a means of control and reduction of nitrogen oxides; 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 air pollution from hazardous

waste treatment, storage or disposal facilities; authorizing the division of environmental protection to promulgate a legislative rule relating to the awarding of the West Virginia stream partners program grant; 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 reclamation; authorizing the division of environmental protection to promulgate a legislative rule relating to quarrying and reclamation; authorizing the division of environmental protection to promulgate a legislative rule relating to the certification of gas wells; authorizing the division of environmental protection to promulgate a legislative rule relating to yard waste composting; authorizing the division of environmental protection to promulgate a legislative rule relating to waste tire management; 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 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.

§64-3-3. Solid waste management board.

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

- 1 (a) The legislative rule filed in the state register on the
- 2 twenty-ninth day of August, two thousand, authorized under the
- 3 authority of section four, article five, chapter twenty-two, of
- 4 this code, relating to the division of environmental protection

5 (emission standards for hazardous air pollutants pursuant to 40
6 CFR Part 61, 45 CSR 15), is authorized.

7 (b) The legislative rule filed in the state register on the
8 twenty-ninth day of August two thousand, authorized under the
9 authority of section four, article five, chapter twenty-two of this
10 code, relating to the division of environmental protection
11 (standards of performance for new stationary sources pursuant
12 to 40 CFR Part 60, 45 CSR 16), is authorized.

13 (c) The legislative rule filed in the state register on the
14 twenty-ninth day of August, two thousand, authorized under the
15 authority of section four, article five, chapter twenty-two of this
16 code, relating to the division of environmental protection (to
17 prevent and control emissions from municipal solid waste
18 landfills, 45 CSR 23), is authorized.

19 (d) The legislative rule filed in the state register on the first
20 day of September, two thousand, authorized under the authority
21 of section four, article five, chapter twenty-two, of this code,
22 relating to the division of environmental protection
23 (requirements for operating permits, 45 CSR 30), is authorized.

24 (e) The legislative rule filed in the state register on the
25 twenty-ninth day of August, two thousand, authorized under the
26 authority of section four, article five, chapter twenty-two of this
27 code, relating to the division of environmental protection
28 (emission standards for hazardous air pollutants pursuant to 40
29 CFR Part 63, 45 CSR 34), is authorized.

30 (f) The legislative rule filed in the state register on the
31 twenty-third day of August, two thousand, authorized under the
32 authority of section two, article six, chapter twenty-two, of this
33 code, relating to the division of environmental protection (oil
34 and gas wells and other wells, 35 CSR 4), is authorized.

35 (g) The legislative rule filed in the state register on the
36 twenty-third day of August, two thousand, authorized under the
37 authority of section six, article eighteen, chapter twenty-two of
38 this code, relating to the division of environmental protection
39 (hazardous waste management, 33 CSR 20), is authorized.

40 (h) The legislative rule filed in the state register on the
41 twenty-third day of August, two thousand, authorized under the
42 authority of section six, article eighteen, chapter twenty-two, of
43 this code, relating to the division of environmental protection
44 (underground storage tanks, 33 CSR 30), is authorized.

45 (i) The legislative rule filed in the state register on the first
46 day of September, two thousand, authorized under the authority
47 of section four, article five, chapter twenty-two, of this code,
48 modified by the division of environmental protection to meet
49 the objections of the legislative rule-making review committee
50 and refiled in the state register on the thirteenth day of
51 December, two thousand, relating to the division of
52 environmental protection (NOx budget trading program as a
53 means of control and reduction of nitrogen oxides, 45 CSR 1),
54 is authorized.

55 (j) The legislative rule filed in the state register on the first
56 day of September, two thousand, authorized under the authority
57 of section four, article five, chapter twenty-two of this code,
58 modified by the division of environmental protection to meet
59 the objections of the legislative rule-making review committee
60 and refiled in the state register on the eighteenth day of January,
61 two thousand one, relating to the division of environmental
62 protection (to prevent and control air pollution from
63 combustion of refuse, 45 CSR 6), is authorized.

64 (k) The legislative rule filed in the state register on the
65 thirty-first day of August two thousand, authorized under the
66 authority of section four, article five, chapter twenty-two of this

67 code, modified by the division of environmental protection to
68 meet the objections of the legislative rule-making review
69 committee and refiled in the state register on the fourteenth day
70 of December, two thousand, relating to the division of
71 environmental protection (to prevent and control air pollution
72 from hazardous waste treatment, storage or disposal facilities,
73 45 CSR 25), is authorized.

74 (l) The legislative rule filed in the state register on the
75 fourth day of May, two thousand, authorized under the authority
76 of section four, article thirteen, chapter twenty, of this code,
77 modified by the division of environmental protection to meet
78 the objections of the legislative rule-making review committee
79 and refiled in the state register on the twentieth day of July, two
80 thousand, relating to the division of environmental protection
81 (awarding of the West Virginia stream partners program grant,
82 60 CSR 4), is authorized.

83 (m) The legislative rule filed in the state register on the
84 twenty-ninth day of August, two thousand, authorized under the
85 authority of section three, article three-a, chapter twenty-two of
86 this code, modified by the division of environmental protection
87 to meet the objections of the legislative rule-making review
88 committee and refiled in the state register on the twentieth day
89 of February, two thousand one, relating to the division of
90 environmental protection (surface mining blasting, 199 CSR 1),
91 is authorized with the following amendments:

92 On page 2, subsection 2.8, after the word “outermost” by
93 inserting the word “loaded”;

94 On page 6, subdivision 3.2.c, by striking out the proposed
95 sentence at the end of the paragraph and inserting in lieu thereof
96 a new sentence to read as follows: For all surface coal
97 extraction operations that will include production blasting, the

98 monitoring procedure shall include provisions for monitoring
99 ground vibrations and air blast.;

100 On pages 8 and 9, subdivision 3.6.a, by striking out the
101 fourth and fifth sentences in their entirety;

102 On page 11, subdivision 3.6.i, by inserting the words “A
103 copy of” at the beginning of the last sentence of the
104 subdivision;

105 On page 13, subdivision 3.8.a, at the end of subdivision, by
106 changing the period to a colon and adding a proviso to read as
107 follows: *Provided*, That once all required preblast surveys have
108 been accepted by the Office of Explosives and Blasting,
109 blasting may commence sooner than 15 days of submittal.;

110 On page 14, subdivision 3.10.a, by striking out the
111 subdivision in its entirety and inserting in lieu thereof a new
112 subdivision 3.10.a to read as follows: The office shall review
113 each preblast survey as to form and completeness only, and
114 notify the operator of any deficiencies. The operator or his
115 designee shall correct deficiencies within 30 days from receipt
116 of notice of deficiencies.;

117 On page 15, subsection 4.1.a., following the words ‘sign the
118 blasting log.’ by inserting the following sentence: ‘Nothing in
119 this rule modifies statutory regulatory authority of the state fire
120 marshal and the state fire commission to regulate blasting and
121 explosives’.;

122 And,

123 On page 25, subsection 6.1 by striking out the words “West
124 Virginia Mining and Reclamation Association” and by inserting
125 the word “Inc.” after the words “West Virginia Coal
126 Association.”

127 (n) The legislative rule filed in the state register on the
128 thirtieth day of August, two thousand, authorized under the
129 authority of section four, article three, chapter twenty-two of
130 this code, modified by the division of environmental protection
131 to meet the objections of the legislative rule-making review
132 committee and refiled in the state register on the twenty-sixth
133 day of October, two thousand, relating to the division of
134 environmental protection (surface mining and reclamation rule,
135 38 CSR 2), is authorized.

136 On page 34 of the rule, subdivision 3.22.e, by striking out
137 the last sentence and inserting in lieu thereof the following:
138 Material damage to the hydrologic balance outside the permit
139 areas means any long term or permanent change in the
140 hydrologic balance caused by surface mining operations which
141 has a significant adverse impact on the capability of the
142 affected water resources to support existing conditions and
143 uses.;

144 On page 104 of the rule, paragraph 11.3.a.3, after the word
145 “surety” by inserting the words “received after July 1, 2001”;

146 On page 135 of the rule, subdivision 12.2.e. after the word
147 “standards” by striking out the words “Measures taken during
148 mining to prevent the formation of waters not in compliance
149 with effluent limitations or water quality standards shall not be
150 considered passive treatment” and inserting in lieu thereof the
151 following: “Measures approved in the permit and taken during
152 mining and reclamation to prevent the formation of acid
153 drainage shall not be considered passive treatment.”;

154 On page 206 of the rule, subsection 24.4 at the end of the
155 subsection, after the word “rule”, by inserting the words
156 “*Provided*, That there is no evidence of a premature vegetation
157 release.”

158 (o) The legislative rule filed in the state register on the
159 twenty-ninth day of August, two thousand, authorized under the
160 authority of section four, article four, chapter twenty-two, of
161 this code, modified by the division of environmental protection
162 to meet the objections of the legislative rule-making review
163 committee and refiled in the state register on the fifteenth day
164 of February, two thousand one, relating to the division of
165 environmental protection (quarrying and reclamation, 38 CSR
166 3), is authorized with the following amendments:

167 “On page 22 of the rule, subsection 8.5., by striking all the
168 language in subsection 8.5 and replacing it with the following
169 language: ‘Backfilling. - - All available spoil material shall be
170 used as necessary to backfill pit areas, to provide positive
171 drainage and to achieve the reclamation as provided for in the
172 approved reclamation plan. Excess spoil shall be placed in
173 controlled fills or spoil piles in accordance with section 9 of this
174 rule. Spoil material that is approved to be placed in permanent
175 excess spoil disposal areas is not required to used as backfill.’

176 And,

177 On page 35 of the rule, subsection 9.4.c.4, following the
178 words ‘professional engineer’ inserting the following sentence
179 ‘The spoil pile shall be considered dormant and shall not need
180 to be certified during periods of inactivity that exceed ninety
181 (90) days in length.’”

182 (p) The legislative rule filed in the state register on the
183 twenty-third day of August, two thousand, authorized under the
184 authority of section two, article six, chapter twenty-two, of this
185 code, modified by the division of environmental protection to
186 meet the objections of the legislative rule-making review
187 committee and refiled in the state register on the twenty-sixth
188 day of October, two thousand, relating to the division of

189 environmental protection (certification of gas wells, 35 CSR 7),
190 is authorized.

191 (q) The legislative rule filed in the state register on the
192 thirty-first day of August, two thousand, authorized under the
193 authority of section eight, article eleven, chapter twenty, of this
194 code, modified by the division of environmental protection to
195 meet the objections of the legislative rule-making review
196 committee and refiled in the state register on the twenty-third
197 day of February, two thousand one, relating to the division of
198 environmental protection (yard waste composting, 33 CSR 3),
199 is authorized.

200 (r) The legislative rule filed in the state register on the
201 thirty-first day of August, two thousand, authorized under the
202 authority of section five, article fifteen, chapter twenty-two, of
203 this code, modified by the division of environmental protection
204 to meet the objections of the legislative rule-making review
205 committee and refiled in the state register on the fifteenth day
206 of December, two thousand, relating to the division of
207 environmental protection (waste tire management, 33 CSR 5),
208 is authorized.

§64-3-2. Environmental quality board.

1 The legislative rule filed in the state register on the first day
2 of September, two thousand, authorized under the authority of
3 section four, article three, chapter twenty-two-b, of this code,
4 relating to the environmental quality board (requirements
5 governing water quality standards, 46 CSR 1), is authorized
6 with the amendment set forth below:

7 On page one by striking out the entire rule and inserting in
8 lieu thereof the following:

9 **§46-1-1. General.**

10 1.1. Scope. — These rules establish requirements
11 governing the discharge or deposit of sewage, industrial wastes and
12 other wastes into the waters of the state and establish water quality
13 standards for the waters of the State standing or flowing over the
14 surface of the State. It is declared to be the public policy of the
15 State of West Virginia to maintain reasonable standards of purity
16 and quality of the water of the State consistent with (1) public
17 health and public enjoyment thereof; (2) the propagation and
18 protection of animal, bird, fish, and other aquatic and plant life; and
19 (3) the expansion of employment opportunities, maintenance and
20 expansion of agriculture and the provision of a permanent
21 foundation for healthy industrial development. (See W. Va. Code
22 §22-11-2.)

23 1.2. Authority. — W. Va. Code §22B-3-4

24 1.3. Filing Date. —

25 1.4. Effective Date. —

26 **§46-1-2. Definitions.**

27 The following definitions in addition to those set forth
28 in W. Va. Code §22-11-3, shall apply to these rules unless
29 otherwise specified herein, or unless the context in which used
30 clearly requires a different meaning:

31 2.1. “Ambient Concentration” is that measured value or
32 level of water quality downstream of the proposed or existing
33 activity (discharge point for point source, runoff area for nonpoint
34 source) for any parameter of concern determined through EPA-
35 approved, collection and analytical methods in 40 CFR 136 or other
36 methods accepted by the Chief.

37 2.2. “Ambient Water Quality Conditions” (AWQC) are
38 those physical, chemical, biological and radiological conditions of
39 the receiving waters of the state existing at the time of review of a
40 regulated activity.

41 2.3. “Baseline Water Quality” is that ambient
42 concentration established at the time of an initial antidegradation
43 review under rules effective (date) for a stream or stream segment
44 or any other water(s) of the state.

- 45 2.4. "Board" is the Environmental Quality Board.
- 46 2.5. "Chief" is the Chief of the Office of Water Resources
47 of the West Virginia Division of Environmental Protection.
- 48 2.6. "Conventional treatment" is the treatment of water as
49 approved by the West Virginia Bureau for Public Health to assure
50 that the water is safe for human consumption.
- 51 2.7. "Cumulative" means a pollutant which increases in
52 concentration in an organism by successive additions at different
53 times or in different ways (bio-accumulation).
- 54 2.8. "Designated uses" are those uses specified in water
55 quality standards for each water body or segment whether or not
56 they are being attained. (See sections 6.2 - 6.6, herein)
- 57 2.9. "Director" is the Director of the West Virginia
58 Division of Environmental Protection.
- 59 2.10. "Dissolved metal" is operationally defined as that
60 portion of metal which passes through a 0.45 micron filter.
- 61 2.11. "Existing uses" are those uses actually attained in a
62 water body on or after November 28, 1975, whether or not they are
63 included in the water quality standards.
- 64 2.12. The "Federal Act" means the Clean Water Act (also
65 known as the Federal Water Pollution Control Act) 33 U.S.C. §
66 1251 - 1387.
- 67 2.13. "High quality waters" are those waters whose quality
68 is equal to or better than the minimum levels necessary to achieve
69 the national water quality goal uses.
- 70 2.14. "Intermittent streams" are streams which have no
71 flow during sustained periods of no precipitation and which do not
72 support aquatic life whose life history requires residence in flowing
73 waters for a continuous period of at least six (6) months.
- 74 2.15. "Outstanding national resource waters" are those
75 waters whose unique character, ecological or recreational value or
76 pristine nature constitutes a valuable national or State resource.

77 2.16. “Natural” or “naturally occurring” values or “natural
78 temperature” shall mean for all of the waters of the state:

79 2.16.a. Those water quality values which exist
80 unaffected by — or unaffected as a consequence of — any water
81 use by any person; and

82 2.16.b. Those water quality values which exist
83 unaffected by the discharge, or direct or indirect deposit of, any
84 solid, liquid or gaseous substance from any point source or non-
85 point source.

86 2.17. “Non-point source” shall mean any source other than
87 a point source from which pollutants may reach the waters of the
88 state.

89 2.18. “Parameter of concern” means any parameter for
90 which numeric water quality criteria have been adopted in 46 CSR
91 1 and any other parameter for which numeric criteria are not
92 established but where the discharge of such parameter has a
93 reasonable potential to either cause or contribute to a violation of
94 the narrative criteria outlined under 46 CSR 1, section 3.

95 2.19. “Persistent” shall mean a pollutant and its
96 transformation products which under natural conditions degrade
97 slowly in an aquatic environment.

98 2.20. “Point source” shall mean any discernible, confined
99 and discrete conveyance, including, but not limited to, any pipe,
100 ditch, channel, tunnel, conduit, well, discrete fissure, container,
101 rolling stock or vessel or other floating craft, from which pollutants
102 are or may be discharged. This term does not include agricultural
103 stormwater discharges and return flows from irrigated agriculture.

104 2.21. “Reasonable less-degrading or non-degrading
105 alternatives” shall be identified based on case specific information
106 (as outlined in section 4C.4.a. of Appendix F, herein). Generally
107 speaking, less-degrading or non-degrading pollution control
108 alternatives shall be considered reasonable where the costs of such
109 alternatives are less than 110% of the costs of the pollution control
110 measures associated with the proposed activity.

111 2.22. “Regulated activity” includes 1) any activity that
112 requires a permit or a water quality certification pursuant to state or

113 federal law (e.g., Clean Water Act §402 NPDES permits, Clean
114 Water Act §404 dredge and fill permits, or any activity requiring a
115 Clean Water Act §401 certification), 2) any activity subject to
116 nonpoint source control requirements or regulations, and 3) any
117 activity which is otherwise subject to state requirements and
118 regulations developed to protect water quality. The term “proposed
119 activity” means a proposed activity that is also a regulated activity.

120 2.23. “Representative important species of aquatic life”
121 shall mean those species of aquatic life whose protection and
122 propagation will assure the sustained presence of a balanced aquatic
123 community. Such species are representative in the sense that
124 maintenance of water quality criteria will assure both the natural
125 completion of the species’ life cycles and the overall protection and
126 sustained propagation of the balanced aquatic community.

127 2.24. The “State Act” or “State Law” shall mean the West
128 Virginia Water Pollution Control Act, W. Va. Code §22-11-1.

129 2.25. “Total recoverable” refers to the digestion procedure
130 for certain heavy metals as referenced in 40 CFR 136, as amended
131 June 15, 1990, Guidelines Establishing Test Procedures for the
132 Analysis of Pollutants Under the Clean Water Act.

133 2.26. “Trading” means establishing upstream controls for
134 a parameter of concern to compensate for new or increased
135 downstream sources for the same parameter resulting in improved
136 water quality for the parameter traded. More than one parameter of
137 concern may be traded on a given stream. Trading may involve
138 point sources, nonpoint sources or a combination of point and
139 nonpoint sources. Unused permitted capacity cannot be traded.

140 2.27. “Trading Assessment Procedure” means
141 methodologies to be used by the Director to document the basis for
142 any trade allowed in sections 4B, 4C and 4D of Appendix F, herein,
143 are EPA’s Total Maximum Daily Load Procedures (40 CFR
144 130.2(i)), wasteload allocation procedures outlined in EPA’s
145 Technical Support Document for Water Quality-based Toxics
146 Control (EPA/505/2-90-001 PB91-127415, March 1991), wasteload
147 allocation methodologies outlined in EPA’s Draft Framework for
148 Watershed-Based Trading (EPA/800-R-96-001, May 1996) or other
149 EPA approved wasteload allocation methodologies as long as these

150 methodologies are consistent with the trading provisions of this
151 rule.

152 2.28. "Trout waters" are streams or stream segments
153 which sustain year-round trout populations. Excluded are those
154 streams or stream segments which receive annual stockings of trout
155 but which do not support year-round trout populations.

156 2.29. "Water of special concern" are those waters
157 occurring in the categories outlined in section 4.1.c. of the
158 antidegradation policy. This designation provides an intermediate
159 level of antidegradation protection between high quality waters and
160 outstanding national resource waters.

161 2.30. "Water quality criteria" shall mean levels of
162 parameters or stream conditions that are required to be maintained
163 by these regulations. Criteria may be expressed as a constituent
164 concentration, levels, or narrative statement, representing a quality
165 of water that supports a designated use or uses.

166 2.31. "Water quality standards" means the combination of
167 water uses to be protected and the water quality criteria to be
168 maintained by these rules.

169 2.32. "Wetlands" are those areas that are inundated or
170 saturated by surface or groundwater at a frequency and duration
171 sufficient to support, and that under normal circumstances do
172 support, a prevalence of vegetation typically adapted for life in
173 saturated soil conditions. Wetlands generally include swamps,
174 marshes, bogs and similar areas.

175 2.33. "Wet weather streams" are streams that flow only in
176 direct response to precipitation or whose channels are at all times
177 above the water table.

178 **§46-1-3. Conditions Not Allowable In State Waters.**

179 3.1. Certain characteristics of sewage, industrial wastes
180 and other wastes cause pollution and are objectionable in all waters
181 of the state. Therefore, the Environmental Quality Board does
182 hereby proclaim that the following general conditions are not to be
183 allowed in any of the waters of the state.

184 3.2. No sewage, industrial wastes or other wastes present
185 in any of the waters of the state shall cause therein or materially
186 contribute to any of the following conditions thereof:

187 3.2.a. Distinctly visible floating or settleable
188 solids, suspended solids, scum, foam or oily slicks;

189 3.2.b. Deposits or sludge banks on the bottom;

190 3.2.c. Odors in the vicinity of the waters;

191 3.2.d. Taste or odor that would adversely affect
192 the designated uses of the affected waters;

193 3.2.e. Materials in concentrations which are
194 harmful, hazardous or toxic to man, animal or aquatic life;

195 3.2.f. Distinctly visible color;

196 3.2.g. Concentrations of bacteria which may
197 impair or interfere with the designated uses of the affected waters;

198 3.2.h. Requiring an unreasonable degree of
199 treatment for the production of potable water by modern water
200 treatment processes as commonly employed; and

201 3.2.i. Any other condition, including radiological
202 exposure, which adversely alters the integrity of the waters of the
203 State including wetlands; no significant adverse impact to the
204 chemical, physical, hydrologic, or biological components of aquatic
205 ecosystems shall be allowed.

206 **§46-1-4. Antidegradation Policy.**

207 4.1. It is the policy of the State of West Virginia that the
208 waters of the state shall be maintained and protected as follows:

209 4.1.a. Tier 1 Protection. Existing water uses and
210 the level of water quality necessary to protect the existing uses shall
211 be maintained and protected. Existing uses are those uses actually
212 attained in the water body on or after November 28, 1975, whether
213 or not they are included as designated uses within these water
214 quality standards.

215 4.1.b. Tier 2 Protection. The existing high
216 quality waters of the state must be maintained at their existing high
217 quality unless it is determined after satisfaction of the
218 intergovernmental coordination of the state's continuing planning
219 process and opportunity for public comment and hearing that
220 allowing lower water quality is necessary to accommodate
221 important economic or social development in the area in which the
222 waters are located. If limited degradation is allowed, it shall not
223 result in injury or interference with existing stream water uses or in
224 violation of state or federal water quality criteria that describe the
225 base levels necessary to sustain the national water quality goal uses
226 of protection and propagation of fish, shellfish and wildlife and
227 recreating in and on the water.

228 In addition, the Board and the Director shall assure that all new
229 and existing point sources shall achieve the highest established
230 statutory and regulatory requirements applicable to them and shall
231 assure the achievement of cost-effective and reasonable best
232 management practices (BMPs) for non-point source control. If
233 BMPs are demonstrated to be inadequate to reduce or minimize
234 water quality impacts, the Director may require that more
235 appropriate BMPs be developed and applied.

236 4.1.b.1. High quality waters are those
237 waters meeting the definition at section 2.13 herein and section
238 4E.1. of Appendix F, herein.

239 4.1.b.2. High quality waters may include
240 but are not limited to the following:

241 4.1.b.2.A. Streams designated
242 by the West Virginia Legislature under the West Virginia Natural
243 Stream Preservation Act, pursuant to W. Va. Code §22-13-5; and

244 4.1.b.2.B. Streams listed in
245 West Virginia High Quality Streams, Fifth Edition, prepared by the
246 Wildlife Resources Division, Department of Natural Resources
247 (1986).

248 4.1.b.2.C. Streams or stream
249 segments which receive annual stockings of trout but which do not
250 support year-round trout populations.

251 4.1.c. Tier 2.5 Protection. Waters of special
252 concern include all of those waters listed in Appendix F-2 herein.
253 Waters of special concern may include, but are not limited to
254 naturally reproducing trout streams, federally designated rivers
255 under the “Wild and Scenic Rivers Act,” 16 U. S.C. §§ 1271 et seq.,
256 waters in state parks and forests, waters in National parks and
257 forests, waters designated under the “National Parks and Recreation
258 Act of 1978,” and waters with unique or exceptional aesthetic,
259 ecological, or recreational value. Waters may be nominated for
260 inclusion in this category by any interested party or by the Board on
261 its own initiative.

262 4.1.d. Tier 3 Protection. In all cases, waters
263 which constitute an outstanding national resource shall be
264 maintained and protected and improved where necessary.
265 Outstanding national resource waters include, but are not limited to,
266 all streams and rivers within the boundaries of Wilderness Areas
267 designated by The Wilderness Act (16 U.S.C. §1131 et seq.) within
268 the State.

269 Additional waters may be nominated for inclusion in that
270 category by any interested party or by the Board on its own
271 initiative. To designate a nominated water as an outstanding
272 national resource water, the Board shall follow the public notice and
273 hearing provisions as provided in 46 C.S.R. 6.

274 4.1.e. All applicable requirements of section
275 316(a) of the Federal Act shall apply to modifications of the
276 temperature water quality criteria provided for in these rules.

277 **§46-1-5. Mixing Zones.**

278 5.1. In the permit review and planning process or upon the
279 request of a permit applicant or permittee, the Chief may establish
280 on a case-by-case basis an appropriate mixing zone.

281 5.2. The following guidelines and conditions are
282 applicable to all mixing zones:

283 5.2.a. The Chief will assign, on a case-by-case
284 basis, definable geometric limits for mixing zones for a discharge or
285 a pollutant or pollutants within a discharge. Applicable limits shall

286 include, but may not be limited to, the linear distances from the
287 point of discharge, surface area involvement, volume of receiving
288 water, and shall take into account other nearby mixing zones.
289 Mixing zones shall take into account the mixing conditions in the
290 receiving stream (i.e: whether complete or incomplete mixing
291 conditions exist). Mixing zones will not be allowed until applicable
292 limits are assigned by the Chief in accordance with this section.

293 5.2.b. Concentrations of pollutants which exceed
294 the acute criteria for protection of aquatic life set forth in Appendix
295 E, Table 1 shall not exist at any point within an assigned mixing
296 zone or in the discharge itself unless a zone of initial dilution is
297 assigned. A zone of initial dilution may be assigned on a case-by-
298 case basis at the discretion of the Chief. The zone of initial dilution
299 is the area within the mixing zone where initial dilution of the
300 effluent with the receiving water occurs, and where the
301 concentration of the effluent will be its greatest in the water column.
302 Where a zone of initial dilution is assigned by the Chief, the size of
303 the zone shall be determined using one of the four alternatives
304 outlined in section 4.3.3 of US EPA's Technical Support Document
305 for Water Quality-based Toxics Control (EPA/505/2-90-001 PB91-
306 127415, March 1991). Concentrations of pollutants shall not
307 exceed the acute criteria at the edge of the assigned zone of initial
308 dilution. Chronic criteria for the protection of aquatic life may be
309 exceeded within the mixing zone but shall be met at the edge of the
310 assigned mixing zone.

311 5.2.c. Concentrations of pollutants which exceed
312 the criteria for the protection of human health set forth in Appendix
313 E, Table 1 shall not be allowed at any point unless a mixing zone
314 has been assigned by the Chief after consultation with the
315 Commissioner of the West Virginia Bureau for Public Health.
316 Human health criteria may be exceeded within an assigned mixing
317 zone, but shall be met at the edge of the assigned mixing zone.
318 Mixing zones for human health criteria shall be sized to prevent
319 significant human health risks and shall be developed using
320 reasonable assumptions about exposure pathways. In assessing the
321 potential human health risks of establishing a mixing zone upstream
322 from a drinking water intake, the Chief shall consider the
323 cumulative effects of multiple discharges and mixing zones on the
324 drinking water intake. No mixing zone for human health criteria
325 shall be established on a stream which has a seven (7) day, ten (10)
326 year return frequency of 5 cfs or less.

327 5.2.d. Mixing zones, including zones of initial
328 dilution, shall not interfere with fish spawning or nursery areas or
329 fish migration routes; shall not overlap public water supply intakes
330 or bathing areas; cause lethality to or preclude the free passage of
331 fish or other aquatic life; nor harm any threatened or endangered
332 species, as listed in the Federal Endangered Species Act, 15 U.S.C.
333 §1531 et seq.

334 5.2.e. The mixing zone shall not exceed one-third
335 (1/3) of the width of the receiving stream, and in no case shall the
336 mixing zone exceed one-half (2) of the cross-sectional area of the
337 receiving stream.

338 5.2.f. In lakes and other surface impoundments,
339 the volume of a mixing zone shall not affect in excess of ten (10)
340 percent of the volume of that portion of the receiving waters
341 available for mixing.

342 5.2.g. A mixing zone shall be limited to an area
343 or volume which will not adversely alter the existing or designated
344 uses of the receiving water, nor be so large as to adversely affect the
345 integrity of the water body.

346 5.2.h. Mixing zones shall not:

347 5.2.h.1. Be used for, or considered as, a
348 substitute for technology-based requirements of the Act and other
349 applicable state and federal laws.

350 5.2.h.2. Extend downstream at any time
351 a distance more than five times the width of the receiving
352 watercourse at the point of discharge.

353 5.2.h.3. Cause or contribute to any of the
354 conditions prohibited in section 3, herein.

355 5.2.h.4. Be granted where instream
356 waste concentration of a discharge is greater than 80%.

357 5.2.h.5. Overlap one another.

358 5.2.h.6. Overlap any 2 mile zone
359 described in section 7.2.a.2 herein.

360 5.2.i. In the case of thermal discharges, a
361 successful demonstration conducted under section 316(a) of the Act
362 shall constitute compliance with all provisions of this section.

363 5.2.j. The Chief may waive the requirements of
364 subsections 5.2.e and 5.2.h.2 above if a discharger provides an
365 acceptable demonstration of:

366 5.2.j.1. Information defining the actual
367 boundaries of the mixing zone in question; and

368 5.2.j.2. Information and data proving no
369 violation of subsections 5.2.d and 5.2.g above by the mixing zone in
370 question.

371 5.2.k. Upon implementation of a mixing zone in
372 a permit, the permittee shall provide documentation that
373 demonstrates to the satisfaction of the Chief that the mixing zone is
374 in compliance with the provisions outlined in subsections 5.2.b,
375 5.2.c, 5.2.e, and 5.2.h.2, herein.

376 5.2.l. In order to facilitate a determination or
377 assessment of a mixing zone pursuant to this section, the Chief may
378 require a permit applicant or permittee to submit such information
379 as deemed necessary.

380 **§46-1-6. Water Use Categories.**

381 6.1. These rules establish general Water Use Categories
382 and Water Quality Standards for the waters of the State. Unless
383 otherwise designated by these rules, at a minimum all waters of the
384 State are designated for the Propagation and Maintenance of Fish
385 and Other Aquatic Life (Category B) and for Water Contact
386 Recreation (Category C) consistent with Federal Act goals.
387 Incidental utilization for whatever purpose may or may not
388 constitute a justification for assignment of a water use category to a
389 particular stream segment.

390 6.1.a. Waste assimilation and transport are not
391 recognized as designated uses. The classification of the waters must
392 take into consideration the use and value of water for public water
393 supplies, protection and propagation of fish, shellfish and wildlife,
394 recreation in and on the water, agricultural, industrial and other
395 purposes including navigation.

396 Subcategories of a use may be adopted and appropriate
397 criteria set to reflect varying needs of such subcategories of
398 uses, for example to differentiate between trout water and
399 other waters.

400 6.1.b. At a minimum, uses are deemed attainable if they
401 can be achieved by the imposition of effluent limits required under
402 section 301(b) and section 306 of the Federal Act and use of
403 cost-effective and reasonable best management practices for
404 non-point source control. Seasonal uses may be adopted as an alter-
405 native to reclassifying a water body or segment thereof to uses re-
406 quiring less stringent water quality criteria. If seasonal uses are
407 adopted, water quality criteria will be adjusted to reflect the sea-
408 sonal uses; however, such criteria shall not preclude the attainment
409 and maintenance of a more protective use in another season. A
410 designated use which is not an existing use may be removed, or
411 subcategories of a use may be established if it can be demonstrated
412 that attaining the designated use is not feasible because:

413 6.1.b.1. Application of effluent limita-
414 tions for existing sources more stringent than those required pursu-
415 ant to section 301 (b) and section 306 of the Federal Act in order to
416 attain the existing designated use would result in substantial and
417 widespread adverse economic and social impact; or

418 6.1.b.2. Naturally-occurring pollutant
419 concentrations prevent the attainment of the use; or

420 6.1.b.3. Natural, ephemeral, intermittent
421 or low flow conditions of water levels prevent the attainment of the
422 use, unless these conditions may be compensated for by the dis-
423 charge of sufficient volume of effluent discharges to enable uses to
424 be met; or

425 6.1.b.4. Human-caused conditions or
426 sources of pollution prevent the attainment of the use and cannot be
427 remedied or would cause more environmental damage to correct
428 than to leave in place; or

429 6.1.b.5. Dams, diversions or other types
430 of hydrologic modifications preclude the attainment of the use, and
431 it is not feasible to restore the water body to its original condition or
432 to operate such modification in a way that would result in the attain-
433 ment of the use; or

434 6.1.b.6. Physical conditions related to
435 the natural features of the water body, such as the lack of a proper
436 substrate, cover, flow, depth, pools, riffles, and the like, unrelated
437 to water quality, preclude attainment of aquatic life protection uses.

438 6.1.c. The State shall take into consideration the
439 quality of downstream waters and shall assure that its water quality
440 standards provide for the attainment of the water quality standards
441 of downstream waters.

442 6.1.d. In establishing a less restrictive use or uses,
443 or subcategory of use or uses, and the water quality criteria based
444 upon such uses, the Board shall follow the requirements for revision
445 of water quality standards as required by W. Va. Code §22B-3-4
446 and section 303 of the Federal Act and the regulations thereunder.
447 Any revision of water quality standards shall be made with the con-
448 currence of EPA. The Board's administrative procedural regula-
449 tions for applying for less restrictive uses or criteria shall be fol-
450 lowed.

451 6.2. Category A — Water Supply, Public. — This cate-
452 gory is used to describe waters which, after conventional treatment,
453 are used for human consumption. This category includes streams
454 on which the following are located:

455 6.2.a. All community domestic water supply
456 systems;

457 6.2.b. All non-community domestic water supply
458 systems, (i.e. hospitals, schools, etc.);

459 6.2.c. All private domestic water systems;

460 6.2.d. All other surface water intakes where the
461 water is used for human consumption. (See Appendix B for partial
462 listing of Category A waters; see section 7.2.a.2, herein for addi-
463 tional requirements for Category A waters.) The manganese human
464 health criteria shall not apply where the discharge point of the man-
465 ganese is located more than five miles upstream from a known
466 drinking water source.

467 6.3. Category B — Propagation and maintenance of fish
468 and other aquatic life. —

469 This category includes:

470 6.3.a. Category B1 — Warm water fishery
471 streams. — Streams or stream segments which contain populations
472 composed of all warm water aquatic life.

473 6.3.b. Category B2 — Trout Waters. — As
474 defined in section 2.28, herein (See Appendix A for a representative
475 list.)

476 6.3.c. Category B4 — Wetlands. — As de-
477 fined in section 2.32, herein; certain numeric stream criteria may
478 not be appropriate for application to wetlands (see Appendix E,
479 Table 1).

480 6.4. Category C — Water contact recreation. — This
481 category includes swimming, fishing, water skiing and certain types
482 of pleasure boating such as sailing in very small craft and outboard
483 motor boats. (See Appendix D for a representative list of category
484 C waters.)

485 6.5. Category D — Agriculture and wildlife uses.

486 6.5.a. Category D1 — Irrigation. — This
487 category includes all stream segments used for irrigation.

488 6.5.b. Category D2 — Livestock watering. —
489 This category includes all stream segments used for livestock water-
490 ing.

491 6.5.c. Category D3 — Wildlife. — This cate-
492 gory includes all stream segments and wetlands used by wildlife.

493 6.6. Category E — Water supply industrial, water trans-
494 port, cooling and power. — This category includes cooling water,
495 industrial water supply, power production, commercial and pleasure
496 vessel activity, except those small craft included in Category C.

497 6.6.a. Category E1 — Water Transport. —
498 This category includes all stream segments modified for water
499 transport and having permanently maintained navigation aides.

500 6.6.b. Category E2 — Cooling Water. — This
501 category includes all stream segments having one (1) or more users
502 for industrial cooling.

503 6.6.c. Category E3 — Power production. —
504 This category includes all stream segments extending from a point
505 500 feet upstream from the intake to a point one half (2) mile be-
506 low the wastewater discharge point. (See Appendix C for represen-
507 tative list.)

508 6.6.d. Category E4 — Industrial. — This cate-
509 gory is used to describe all stream segments with one (1) or more
510 industrial users. It does not include water for cooling.

511 **§46-1-7. West Virginia Waters.**

512 7.1. Major River Basins and their Alphanumeric System.
513 All streams and their tributaries in West Virginia shall be individu-
514 ally identified using an alphanumeric system as identified in the
515 “Key to West Virginia Stream Systems and Major Tributaries”
516 (1956) as published by the Conservation Commission of West Vir-
517 ginia and revised by the West Virginia Department of Natural Re-
518 sources, Division of Wildlife (1985).

519 7.1.a. J - James River Basin. All tributaries to
520 the West Virginia - Virginia State line.

521 7.1.b. P - Potomac River Basin. All tributaries of
522 the main stem of the Potomac River to the West Virginia - Mary-
523 land - Virginia State line to the confluence of the North Branch
524 and the South Branch of the Potomac River and all tributaries aris-
525 ing in West Virginia excluding the major tributaries hereinafter
526 designated:

527 7.1.b.1. S - Shenandoah River and all
528 its tributaries arising in West Virginia to the West Virginia - Vir-
529 ginia State line.

530 7.1.b.2. PC - Cacapon River and all its
531 tributaries.

532 7.1.b.3. PSB - South Branch and all its
533 tributaries.

534 7.1.b.4. PNB - North Branch and all
535 tributaries to the North Branch arising in West Virginia.

536 7.1.c. M - Monongahela River Basin. The
537 Monongahela River Basin main stem and all its tributaries exclud-
538 ing the following major tributaries which are designated as follows:

539 7.1.c.1. MC - Cheat River and all its
540 tributaries except those listed below:

541 7.1.c.1.A. MCB - Blackwater
542 River and all its tributaries.

543 7.1.c.2. MW - West Fork River and all
544 its tributaries.

545 7.1.c.3. MT - Tygart River and all its
546 tributaries except those listed below:

547 7.1.c.3.A. MTB - Buckhannon
548 River and all its tributaries.

549 7.1.c.3.B. MTM - Middle Fork
550 River and all its tributaries.

551 7.1.c.4. MY - Youghieny River and
552 all its tributaries to the West Virginia - Maryland State line.

553 7.1.d. O Zone 1 - Ohio River - Main Stem. The
554 main stem of the Ohio River from the Ohio - Pennsylvania - West
555 Virginia state line to the Ohio - Kentucky - West Virginia State line.

556 7.1.e. O Zone 2 - Ohio River - Tributaries. All
557 tributaries of the Ohio River excluding the following major tributar-
558 ies:

559 7.1.e.1. LK - Little Kanawha River.
560 The Little Kanawha River and all its tributaries excluding the fol-
561 lowing major tributary which is designated as follows:

562 7.1.e.1.A. LKH - Hughes River
563 and all its tributaries.

564 7.1.e.2. K - Kanawha River Zone 1.
565 The main stem of the Kanawha River from mile point 0, at its con-

566 fluence with the Ohio River, to mile point 72 near Diamond, West
567 Virginia.

568 7.1.e.3. K - Kanawha River Zone 2.
569 The main stem of the Kanawha River from mile point 72 near Dia-
570 mond, West Virginia and all its tributaries from mile point 0 to the
571 headwaters excluding the following major tributaries which are
572 designated as follows:

573 7.1.e.3.A. KP - Pocatalico
574 River and all its tributaries.

575 7.1.e.3.B. KC - Coal River and
576 all its tributaries.

577 7.1.e.3.C. KE - Elk River and
578 all its tributaries.

579 7.1.e.3.D. KG - Gauley River.
580 The Gauley River and all its tributaries excluding the following
581 major tributaries which are designated as follows:

582 7.1.e.3.D.1. KG-19 -
583 Meadow River and all its tributaries.

584 7.1.e.3.D.2. KG-34 -
585 Cherry River and all its tributaries.

586 7.1.e.3.D.3. KGC -
587 Cranberry River and all its tributaries.

588 7.1.e.3.D.4. KGW - Wil-
589 liams River and all its tributaries.

590 7.1.e.3.E. KN - New River.
591 The New River from its confluence with the Gauley River to the
592 Virginia - West Virginia State line and all tributaries excluding the
593 following major tributaries which are designated as follows:

594 7.1.e.3.E.1. KNG -
595 Greenbrier River and all its tributaries.

596 7.1.e.3.E.2. KNB -
597 Bluestone River and all its tributaries.

598

599
600 East River and all its tributaries. 7.1.e.3.E.3. KN-60 -

601
602 (1) - Bluestone Lake. 7.1.e.3.E.4. K(L)-81-

603
604 Guyandotte River and all its tributaries excluding the following
605 major tributary which is designated as follows:

606
607 and all its tributaries. 7.1.e.4.1. OGM - Mud River

608
609 Sandy River to the Kentucky - Virginia - West Virginia State lines
610 and all its tributaries arising in West Virginia excluding the follow-
611 ing major tributary which is designated as follows:

612
613 Fork and all its tributaries. 7.1.e.5.1 BST - Tug

614
615 7.2. Applicability of Water Quality Standards. The fol-
616 lowing shall apply at all times unless a specific exception is granted
in this section:

617
618 7.2.a. Water Use Categories as described in sec-
tion 6, herein.

619
620 7.2.a.1. Based on meeting those Section
621 6 definitions, tributaries or stream segments may be classified for
622 one or more Water Use Categories. When more than one use exists,
623 they shall be protected by criteria for the use category requiring the
most stringent protection.

624
625 7.2.a.2. Each segment extending up-
626 stream from the intake of a water supply public (Water Use Cate-
627 gory A), for a distance of one half (2) mile or to the headwater,
628 must be protected by prohibiting the discharge of any pollutants in
629 excess of the concentrations designated for this Water Use Category
630 in section 8, herein. In addition, within that one half (2) mile zone,
631 the Chief may establish for any discharge, effluent limitations for
the protection of human health that require additional removal of

632 pollutants than would otherwise be provided by this rule. (If a wa-
633 tershed is not significantly larger than this zone above the intake,
634 the water supply section may include the entire upstream watershed
635 to its headwaters.) Until June 30, 2003, the one-half mile zone
636 described in this section shall not apply to the Ohio River main
637 channel (between Brown's Island and the left descending bank)
638 between river mile points 61.0 and 63.5.

639 7.2.b. In the absence of any special application or
640 contrary provision, water quality standards shall apply at all times
641 when flows are equal to or greater than the minimum mean seven
642 (7) consecutive day drought flow with a ten (10) year return fre-
643 quency (7Q10). NOTE: With the exception of section 7.2.c.5
644 listed herein exceptions do not apply to trout waters nor to the re-
645 quirements of section 3, herein.

646 7.2.c. Exceptions: Numeric water quality stan-
647 dards shall not apply: (See section 7.2.d, herein, for site-specific
648 revisions)

649 7.2.c.1. When the flow is less than
650 7Q10;

651 7.2.c.2. In wet weather streams (or inter-
652 mittent streams, when they are dry or have no measurable flow):
653 Provided, That the existing and designated uses of downstream
654 waters are not adversely affected;

655 7.2.c.3. In any assigned zone of initial
656 dilution of any mixing zone where a zone of initial dilution is re-
657 quired by section 5.2.b herein, or in any assigned mixing zone for
658 human health criteria or aquatic life criteria for which a zone of
659 initial dilution is not assigned; In zones of initial dilution and cer-
660 tain mixing zones: Provided, That all requirements described in
661 section 5 herein shall apply to all zones of initial dilution and all
662 mixing zones;

663 7.2.c.4. Where, on the basis of natural
664 conditions, the Board has established a site-specific aquatic life
665 water quality criterion that modifies a water quality criterion set out
666 in Appendix E, Table 1 of this rule. Where a natural condition of a
667 waterbody is demonstrated to be of lower quality than a water qual-
668 ity criterion for the use classes and subclasses in section 6 of this
669 rule, the Board, in its discretion, may establish a site-specific water

670 quality criterion for aquatic life. This alternate criterion may only
671 serve as the chronic criterion established for that parameter. This
672 alternate criterion must be met at end of pipe. Where the Board
673 decides to establish a site-specific water quality criterion for aquatic
674 life, the natural condition constitutes the applicable water quality
675 criterion. A site-specific criterion for natural conditions may only
676 be established through the legislative rulemaking process in accor-
677 dance with W.Va. Code §29A-3-1 et seq. and must satisfy the pub-
678 lic participation requirements set forth at 40 C.F.R. 131.20 and 40
679 C.F.R. Part 25. Site-specific criteria for natural conditions may be
680 established only for aquatic life criteria. A public notice, hearing
681 and comment period is required before site-specific criteria for nat-
682 ural conditions are established.

683 Upon application or on its own initiative, the Board will
684 determine whether a natural condition of a waterbody should be
685 approved as a site-specific water quality criterion. Before it ap-
686 proves a site-specific water quality criterion for a natural condition,
687 the Board must find that the natural condition will fully protect
688 existing and designated uses and ensure the protection of aquatic
689 life. If a natural condition of a waterbody varies with time, the
690 natural condition will be determined to be the actual natural condi-
691 tion of the waterbody measured prior to or concurrent with dis-
692 charge or operation. The Board will, in its discretion, determine a
693 natural condition for one or more seasonal or shorter periods to
694 reflect variable ambient conditions; and require additional or con-
695 tinuing monitoring of natural conditions.

696 An application for a site-specific criterion to be established
697 on the basis of natural conditions shall be filed with the Board and
698 shall include the following information:

699 7.2.c.4.A. A U.S.G.S. 7.5 min-
700 ute map showing the stream segment affected and showing all exist-
701 ing discharge points and proposed discharge point;

702 7.2.c.4.B. The alphanumeric
703 code of the affected stream, if known;

704 7.2.c.4.C. Water quality data for
705 the stream or stream segment. Where adequate data are unavail-
706 able, additional studies may be required by the Board;

- 707 7.2.c.4.D. General land uses
708 (e.g. mining, agricultural, recreation, residential, commercial, indus-
709 trial, etc.) as well as specific land uses adjacent to the waters for the
710 affected segment or stream;
- 711 7.2.c.4.E. The existing and des-
712 igned uses of the receiving waters into which the segment in ques-
713 tion discharges and the location where those downstream uses begin
714 to occur;
- 715 7.2.c.4.F. General physical
716 characteristics of the stream segment, including, but not limited to
717 width, depth, bottom composition and slope;
- 718 7.2.c.4.G. Conclusive informa-
719 tion and data of the source of the natural condition that causes the
720 stream to exceed the water quality standard for the criterion at issue.
- 721 7.2.c.4.H. The average flow rate
722 in the segment and the amount of flow at a designated control point
723 and a statement regarding whether the flow of the stream is ephem-
724 eral, intermittent or perennial;
- 725 7.2.c.4.I. An assessment of
726 aquatic life in the stream or stream segment in question and in the
727 adjacent upstream and downstream segments; and
- 728 7.2.c.4.J. Any additional infor-
729 mation or data that the Board deems necessary to make a decision
730 on the application.
- 731 7.2.c.5. For the upper Blackwater River
732 from the mouth of Yellow Creek to a point 5.1 miles upstream,
733 when flow is less than 7Q10. Naturally occurring values for Dis-
734 solved Oxygen as established by data collected by the dischargers
735 within this reach and reviewed by the Board and Division of Envi-
736 ronmental Protection shall be the applicable criteria.
- 737 7.2.d. Site-specific applicability of water use
738 categories and water quality criteria - State-wide water quality
739 standards shall apply except where site-specific numeric criteria,
740 variances or use removals have been approved following applica-
741 tion and hearing, as provided in 46 C.S.R. 6. (See section 8.3 and

742 section 8.4, herein) The following are approved site-specific crite-
743 ria, variances and use reclassifications:

744 7.2.d.1. James River - (Reserved)

745 7.2.d.2. Potomac River

746 7.2.d.2.1. Except that a site-
747 specific numeric criterion for aluminum, not to exceed 500 ug/l,
748 shall apply to the section of Opequon Creek from Turkey Run to the
749 Potomac River.

750 7.2.d.3. Shenandoah River - (Reserved)

751 7.2.d.4. Cacapon River - (Reserved)

752 7.2.d.5. South Branch - (Reserved)

753 7.2.d.6. North Branch

754 7.2.d.6.1 Except that the Stony
755 River downstream from the limit of the thermal mixing zone (as
756 established by Board Order of 11/20/75) for the Mount Storm Lake
757 wastewater treatment facility to its confluence with the North
758 Branch of the Potomac River is exempt from the 5°F above natural
759 temperature rise; however, the maximum temperature outside the
760 mixing zone shall not exceed 87°F at any time during the months of
761 May through November and not exceed 73°F at any time during the
762 months of December through April. This exception shall apply
763 until the successful completion of a study conducted pursuant to
764 section 316(a) of the Federal Act or December 31, 1998, whichever
765 comes first.

766 7.2.d.7. Monongahela River

767 7.2.d.7.1. Except that flow in
768 the main stem of the Monongahela River, as regulated by the Tygart
769 Reservoir, operated by the U. S. Army Corps of Engineers, is based
770 on a minimum flow of 345 cfs at Lock and Dam No. 8, river mile
771 point 90.8. This exception does not apply to tributaries of the
772 Monongahela River.

773 7.2.d.8. Cheat River

- 774 7.2.d.8.1. Except that in the
775 unnamed tributary of Daugherty Run, approximately one mile up-
776 stream of Daugherty Run=s confluence with the Cheat River, a site-
777 specific numeric criterion for iron of 3.5 mg/l shall apply and the
778 following frequency and duration requirements shall apply to the
779 chronic numeric criterion for selenium (5ug/l): the four-day average
780 concentration shall not be exceeded more than three times every
781 three years (36 months), on average. Further, the following site-
782 specific numeric criteria shall apply to Fly Ash Run of Daugherty
783 Run: acute numeric criterion for aluminum: 888.5 ug/l and manga-
784 nese: 5 mg/l.
- 785 7.2.d.9. Blackwater River - The Black-
786 water River below Davis, West Virginia shall be classified as a trout
787 water, Category B2.
- 788 7.2.d.10. West Fork River - (Reserved)
- 789 7.2.d.11. Tygart River - (Reserved)
- 790 7.2.d.12. Buckhannon River - (Re-
791 served)
- 792 7.2.d.13. Middle Fork River - (Re-
793 served)
- 794 7.2.d.14. Youghiogheny River
- 795 7.2.d.14.1 Water Use Catego-
796 ries A and E are excluded from the tributaries of the Youghiogheny
797 River in West Virginia which flow into Maryland.
- 798 7.2.d.15. Ohio River Main Stem - (Re-
799 served)
- 800 7.2.d.16. Ohio River Tributaries.
- 801 7.2.d.16.1. Except that site-
802 specific numeric criteria shall apply to the stretch of Conners Run
803 (0-77-A), a tributary of Fish Creek, from its mouth to the discharge
804 from Conner Run impoundment, which shall not have the Water
805 Use Category A and may contain selenium not to exceed 62 ug/l;
806 and iron not to exceed 3.5 mg/l as a monthly average and 7 mg/l as
807 a daily maximum.

808 7.2.d.16.2. Except that a
809 socio-economic variance shall apply to that segment of Harmon
810 Creek (0-97) from its confluence with the Ohio River to a point 2.2
811 miles upstream, which shall not have water use Category A desig-
812 nation, and which shall have the following instream criteria: Lead
813 14 ug/l, Daily Maximum, Zinc 181 ug/l, Daily Maximum, Tempera-
814 ture 100 degree F (monitored per Footnote 12 of the permit); Iron
815 4.0 mg/l, Monthly Average and 8.0 mg/l, Daily Maximum (moni-
816 tored per Footnote 12 of the permit). Provided, however, that the
817 criteria for Lead, Zinc, Temperature and Iron shall not apply, and
818 instead the state-wide criteria for these parameters shall apply, un-
819 less: Weirton Steel Corporation (1) submits to the Office of Water
820 Resources on or before January 31, 2001 a report setting forth the
821 water quality of the discharge from Outlet 004 for these parameters
822 during calendar year 2000; (2) offers further proposals for any ap-
823 propriate reductions in the above excepted levels; (3) provides any
824 appropriate additional engineering analysis of potential alternatives
825 for reducing further the concentrations of said parameters in the
826 discharge toward achieving statewide criteria; and (4) continues to
827 submit to the Office of Water Resources on a semi-annual basis,
828 summary reports on the water quality of the discharge from Outlet
829 004 and the efforts made by Weirton Steel Corporation during the
830 prior six (6) months to improve the quality of said discharge. Addi-
831 tionally Weirton Steel must determine the water quality of Harmon
832 Creek both immediately upstream of and below the discharge of
833 outlet 004 at the Con Rail Bridge by sampling for Flow, pH, Total
834 and Dissolved Lead, Total and Dissolved Zinc, Iron, Fluoride, Tem-
835 perature, Turbidity, Oil and Grease and Hardness on at least a
836 monthly basis and submit the results to the Office of Water Re-
837 sources with the semi-annual report. These exceptions shall be in
838 effect until action by the Environmental Quality Board to revise
839 such exceptions or until June 29, 2004, whichever comes first.

840 7.2.d.17. Little Kanawha River - (Re-
841 served)

842 7.2.d.18. Hughes River - (Reserved)

843 7.2.d.19. Kanawha River Zone 1 - Main
844 Stem

845 7.2.d.19.1 For the Kanawha
846 River main stem, Zone 1, Water Use Category A shall not apply;
847 and

848 7.2.d.19.2. The minimum flow
849 shall be 1,960 cfs at the Charleston gauge.

850 7.2.d.20. Kanawha River Zone 2 and
851 Tributaries.

852 7.2.d.20.1. For the main stem
853 of the Kanawha River only, the minimum flow shall be 1,896 cfs at
854 mile point 72.

855 7.2.d.20.2. Except the stretch
856 between the mouth of Little Scary Creek (K-31) and the Little Scary
857 impoundment shall not have Water Use Category A. The following
858 site-specific numeric criteria shall apply to that section: selenium
859 not to exceed 62 ug/1 and copper not to exceed 105 ug/1 as a daily
860 maximum nor 49 ug/1 as a 4-day average.

861 7.2.d.20.3. Except for Simmons
862 Creek (K-54) from its mouth to a point 1200 feet upstream to which
863 the following site-specific numeric criteria shall apply: a maximum
864 daily temperature not to exceed 38°C (100°F) nor a monthly
865 average temperature to exceed 34°C. This exception shall apply
866 until the successful completion of a study conducted pursuant to
867 section 316(a) of the Federal Act or May 30, 1998, whichever
868 comes first.

869 7.2.d.21. Pocatalico River - (Reserved)

870 7.2.d.22. Coal River - (Reserved)

871 7.2.d.23. Elk River - (Reserved)

872 7.2.d.24. Gauley River - (Reserved)

873 7.2.d.25. Meadow River - (Reserved)

874 7.2.d.26. Cherry River - (Reserved)

875 7.2.d.27. Cranberry River - (Reserved)

876 7.2.d.28. Williams River - (Reserved)

- 877 7.2.d.29. New River - (Reserved)
878 7.2.d.30. Greenbrier River - (Reserved)
879 7.2.d.31. Bluestone River - (Reserved)
880 7.2.d.32. Bluestone Lake
881 7.2.d.33. East River - (Reserved)
882 7.2.d.34. Guyandotte River - (Reserved)
883 7.2.d.35. Mud River - (Reserved)
884 7.2.d.36. Big Sandy River - (Reserved)
885 7.2.d.37. Tug Fork River - (Reserved)

886 **§46-1-8. Specific Water Quality Criteria.**

887 8.1. Charts of specific water quality criteria are included
888 in Appendix E, Table 1.

889 8.1.a. Specific state (i.e. total, total recoverable,
890 dissolved, valence, etc.) of any parameter to be analyzed shall fol-
891 low 40 CFR 136, Guidelines Establishing Test Procedures for Anal-
892 ysis of Pollutants Under the Clean Water Act, as amended, June 15,
893 1990. (See also 47 C.S.R. 10, section 7.3 - National Pollutant Dis-
894 charge Elimination System (NPDES) Program.)

895 8.1.b. Compliance with aquatic life water quality
896 criteria expressed as dissolved metal shall be determined based on
897 dissolved metals concentrations.

898 8.1.b.1. The aquatic life criteria for all
899 metals listed in Appendix E, Table 2 shall be converted to a dis-
900 solved concentration by multiplying each numerical value or crite-
901 rion equation from Appendix E, Table 1 by the appropriate conver-
902 sion factor (CF) from Appendix E, Table 2.

903 8.1.b.2. Permit limits based on dissolved
904 metal water quality criteria shall be prepared in accordance with the
905 U.S. EPA document "The Metals Translator: Guidance For Calculating A Total Recoverable Permit Limit From A Dissolved Crite-
906 rion, EPA 823-B-96-007 June 1996.
907

908 8.1.b.3. NPDES permit applicants may
909 petition the Office of Water Resources of the Division of Environ-
910 mental Protection (OWR) to develop a site-specific translator con-
911 sistent with the provisions in this section. The OWR may, on a
912 case-by-case basis require an applicant applying for a translator to
913 conduct appropriate sediment monitoring through SEM/AVS ratio,
914 bioassay or other approved methods to evaluate effluent limits that
915 prevent toxicity to aquatic life.

916 8.1.c. An "X" or numerical value in the use col-
917 umns of Appendix E, Table 1 shall represent the applicable criteria.

918 8.1.d. Charts of water quality criteria in Appen-
919 dix E, Table 1 shall be applied in accordance with major stream and
920 use applications, sections 6 and 7, herein.

921 8.2. Criteria for Toxicants

922 8.2.a. Toxicants which are carcinogenic have
923 human health criteria (Water Use Categories A and C) based upon
924 an estimated risk level of one additional cancer case per one mil-
925 lion persons (10^{-6}) and are indicated in Appendix E, Table 1 with
926 an endnote ^(b).

927 8.2.b. A final determination on the critical design flow for
928 carcinogens is not made in this rule, in order to permit further re-
929 view and study of that issue. Following the conclusion of such
930 review and study, the Legislature may again take up the authoriza-
931 tion of this rule for purposes of addressing the critical design flow
932 for carcinogens: Provided, That until such time as the review and
933 study of the issue is concluded or until such time as the Legislature
934 may again take up the authorization of this rule, the regulatory re-
935 quirements for determining effluent limits for carcinogens shall
936 remain as they were on the date this rule was proposed.

937 8.3. Variances from Specific Water Quality Criteria. A
938 variance from numeric criteria may be granted to a discharger if it
939 can be demonstrated that the conditions outlined in subsections
940 6.1.b.A - F, herein, limit the attainment of one or more specific
941 water quality criteria. Variances shall apply only to the discharger
942 to whom they are granted and shall be reviewed by the Board at
943 least every three years. In granting a variance, the requirements for
944 revision of water quality standards in 46 CSR 6 shall be followed.

945 8.4. Site-specific numeric criteria. The Board may estab-
946 lish numeric criteria different from those set forth in Appendix E,
947 Table 1 for a stream or stream segment upon a demonstration that
948 existing numeric criteria are either over-protective or under-protective
949 of the aquatic life residing in the stream or stream segment. A
950 site-specific numeric criterion will be established only where the
951 numeric criterion will be fully protective of the aquatic life and the
952 existing and designated uses in the stream or stream segment. The
953 site-specific numeric criterion may be established by conducting a
954 Water Effect Ratio study pursuant to the procedures outlined in US
955 EPA's "Interim Guidance on the Determination and Use of Water-
956 Effect Ratios for Metals" (February 1994); other methods may be
957 used with prior approval by the Board. In adopting site-specific
958 numeric criteria, the requirements for revision of water quality stan-
959 dards set forth in 46 CSR 6 shall be followed.

960 **§46-1-9. Establishment Of Safe Concentration Values.**

961 When a specific water quality standard has not been estab-
962 lished by these rules and there is a discharge or proposed discharge
963 into waters of the State, the use of which has been designated a
964 Category B1, B2, B3 or B4, such discharge may be regulated by the
965 Chief where necessary to protect State waters through establishment
966 of a safe concentration value as follows:

967 9.1. Establishment of a safe concentration value shall be
968 based upon data obtained from relevant aquatic field studies, stan-
969 dard bioassay test data which exists in substantial available scien-
970 tific literature, or data obtained from specific tests utilizing one (1)
971 or more representative important species of aquatic life designated
972 on a case-by-case basis by the Chief and conducted in a water envi-
973 ronment which is equal to or closely approximates that of the natu-
974 ral quality of the receiving waters.

975 9.2. In those cases where it has been determined that there
976 is insufficient available data to establish a safe concentration value
977 for a pollutant, the safe concentration value shall be determined by
978 applying the appropriate application factor as set forth below to the
979 96-hour LC 50 value. Except where the Chief determines, based
980 upon substantial available scientific data that an alternate applica-
981 tion factor exists for a pollutant, the following appropriate applica-
982 tion factors shall be used in the determination of safe concentration
983 values:

984 9.2.a. Concentrations of pollutants or combina-
985 tions of pollutants that are not persistent and not cumulative shall
986 not exceed 0.10 (1/10) of the 96-hour LC 50.

987 9.2.b. Concentrations of pollutants or combina-
988 tions of pollutants that are persistent or cumulative shall not exceed
989 0.01 (1/100) of the 96-hour LC 50.

990 9.3. Persons seeking issuance of a permit pursuant to
991 these rules authorizing the discharge of a pollutant for which a safe
992 concentration value is to be established using special bioassay tests
993 pursuant to subsection 9.1 of this section shall perform such testing
994 as approved by the Chief and shall submit all of the following in
995 writing to the Chief:

996 9.3.a. A plan proposing the bioassay testing to be
997 performed.

998 9.3.b. Such periodic progress reports of the test-
999 ing as may be required by the Chief.

1000 9.3.c. A report of the completed results of such
1001 testing including, but not limited to, all data obtained during the
1002 course of testing, and all calculations made in the recording, collec-
1003 tion, interpretation and evaluation of such data.

1004 9.4. Bioassay testing shall be conducted in accordance
1005 with methodologies outlined in the following documents: U.S.
1006 EPA Office of Research and Development Series Publication,
1007 Methods for Measuring the Acute Toxicity (EPA/600/4-90/027F,
1008 August 1993, 4th Edition) or Short Term Methods for Estimating
1009 Chronic Toxicity of Effluents and Receiving Waters to Freshwater
1010 Organisms (EPA/600/4-89/001), March 1989; Standard Methods
1011 for the Examination of Water and Wastewater (18th Edition); or
1012 ASTM Practice E 729-88 for Conducting Acute Toxicity Tests with
1013 Fishes, Macroinvertebrates and Amphibians as published in Volume
1014 11.04 of the 1988 Annual Book of ASTM Standards. Test waters
1015 shall be reconstituted according to recommendations and methodol-
1016 ogies specified in the previously cited references or methodologies
1017 approved in writing by the Chief.

1018

APPENDIX A

1019

CATEGORY B-2 - TROUT WATERS

1020 This list contains known trout waters and is not intended
 1021 to exclude any waters which meet the definition in Section
 1022 2.28.

1023	<u>River Basin</u>	<u>County</u>	<u>Stream</u>
1024	James River		
1025	J	Monroe	South Fork Potts Creek
1026	Potomac River		
1027	P	Jefferson	Town Run
1028	P	"	Rocky Marsh Run
1029	P	Berkeley	Opequon Creek
1030	P	"	Tuscarora Creek
1031			(Above Martinsburg)
1032	P	"	Middle Creek
1033			(Above Route 30 Bridge)
1034	P	"	Mill Creek
1035	P	"	Hartland Run
1036	P	"	Mill Run
1037	P	"	Tillance Creek
1038	P	Morgan	Meadow Branch
1039	PS	Jefferson	Flowing Springs Run
1040			(Above Halltown)
1041	PS	"	Cattail Run
1042	PS	"	Evitt's Run
1043	PS	"	Big Bullskin Run
1044	PS	"	Long Marsh Run
1045	PC	Hampshire	Cold Stream
1046	PC	"	Edwards Run and Impoundment
1047	PC	"	Dillons Run
1048	PC	Hardy	Lost River
1049	PC	"	Camp Branch
1050	PC	"	Lower Cove Run
1051	PC	"	Moores Run
1052	PC	"	North River (Above Rio)
1053	PC	"	Waites Run
1054	PC	"	Trout Run

1055	PC	“	Trout Pond (Impoundment)
1056	PC	“	Warden Lake (Impoundment)
1057	PC	“	Rock Cliff Lake (Impoundment)
1058	PSB	Hampshire	Mill Creek
1059	PSB	“	Mill Run
1060	PSB	Hardy	Dumpling Creek
1061	PSB	Grant-Pendleton	North Fork South Branch
1062	PSB	Grant	North Fork Lunice Creek
1063	PSB	“	South Fork Lunice Creek
1064	PSB	“	South Mill Creek (Above Hiser)
1065	PSB	“	Spring Run
1066	PSB	Pendleton	Hawes Run (Impoundment)
1067	PSB	“	Little Fork
1068	PSB	“	South Branch
1069			(Above North Fork)
1070	PSB	“	Senena Creek
1071	PSB	“	Laurel Fork
1072	PSB	“	Big Run
1073	PNB	Mineral	North Fork Patterson Creek
1074	PNB	“	Fort Ashby (Impoundment)
1075	PNB	“	New Creek
1076	PNB	“	New Creek Dam 14
1077			(Impoundment)
1078	PNB	“	Mill Creek (Above Markwood)
1079	Monongahela River		
1080	M	Monongalia-Marion	Whiteday Creek
1081			(Above Smithtown)
1082	MC	Monongalia	Morgan Run
1083	MC	“	Coopers Rock (Impoundment)
1084	MC	“	Blaney Hollow
1085	MC	Preston	Laurel Run
1086	MC	“	Elsley Run
1087	MC	“	Saltlick Creek
1088	MC	“	Buffalo Creek
1089	MC	“	Wolf Creek
1090	MC	Tucker	Clover Run
1091	MC	“	Elklick Run
1092	MC	“	Horseshoe Run
1093	MC	“	Maxwell Run
1094	MC	“	Red Creek
1095	MC	“	Slip Hill Mill Branch
1096	MC	“	Thomas Park (Impoundment)

1097	MC	“	Blackwater River (Above Davis)
1098	MC	“	Blackwater River (Below Davis)
1099			(insert date adopted)
1100	MC	Randolph	Camp Five Run
1101	MC	“	Dry Fork (Above Otter Creek)
1102	MC	“	Glady Fork
1103	MC	“	Laurel Fork
1104	MC	“	Gandy Creek (Above Whitmer)
1105	MC	“	East Fork Glady Fork (Above
1106			C & P Compressor Station)
1107	MC	Randolph	Shavers Fork
1108			(Above Little Black Fork)
1109	MC	“	Three Spring Run
1110	MC	“	Spruce Knob Lake
1111			(Impoundment)
1112	MW	Harrison	Dog Run (Pond)
1113	MW	Lewis	Stonecoal
1114	MT	Barbour	Brushy Fork
1115			(Above Valley Furnace)
1116	MT	“	Teter Creek Lake
1117			(Impoundment)
1118	MT	“	Mill Run
1119	MT	Taylor-Barbour	Tygart Lake Tailwaters
1120			(Above Route 119 Bridge)
1121	MT	Preston	Roaring Creek
1122			(Above Little Lick Branch)
1123	MT	Randolph	Tygart River
1124			(Above Huttonsville)
1125	MT	“	Elkwater Fork
1126	MT	“	Big Run
1127	MTB	Upshur-Randolph-Lewis	Right Fork Buckhannon River
1128	MTB	Upshur	Buckhannon River
1129			(Above Beans Mill)
1130	MTB	Upshur	French Creek
1131	MTB	Upshur-Randolph	Left Fork Right Fork
1132	MTN	Upshur	Right Fork Middle Fork River
1133	MTM	Randolph	Middle Fork River
1134			(Above Cassity)
1135	MY	Preston	Rhine Creek
1136			Little Kanawha River
1137	LK	Upshur	Left Fork-Right Fork Little
1138			Kanawha River)

1139	LK	Upshur-Lewis	Little Kanawha River
1140			(Above Wildcat)
1141		Kanawha River	
1142	KE	Braxton	Sutton Reservoir
1143	KE	“	Sutton Lake Tailwaters
1144			(Above Route 38/5 Bridge)
1145	KE	Webster	Back Fork
1146	KE	“	Desert Fork
1147	KE	“	Fall Run
1148	KE	“	Laurel Fork
1149	KE	“	Left Fork Holly River
1150	KE	“	Sugar Creek
1151	KE	“	Elk River
1152			(Above Webster Springs)
1153	KC	Raleigh	Stephens Lake (Impoundment)
1154	KC	“	Marsh Fork (Above Sundial)
1155	KG	Nicholas	Summersville Reservoir
1156			(Impoundment)
1157	KG	“	Summersville Tailwaters
1158			(Above Collison Creek)
1159	KG	Nicholas	Deer Creek
1160	KG	Randolph-Webster	Gauley River
1161			(Above Moust Coal Tipple)
1162	KG	Fayette	Glade Creek
1163	KG	Nicholas	Hominy Creek
1164	KG	“	Anglins Creek
1165	KG	Greenbrier	Big Clear Creek
1166	KG	“	Little Clear Creek and Laurel Run
1167	KG	“	Meadow Creek
1168	KG	Fayette	Wolf Creek
1169	KG	Nicholas	Cherry River
1170	KG	Greenbrier-Nicholas	Laurel Creek
1171	KG	“ ”	North Fork Cherry River
1172	KG	Greenbrier	Summit Lake (Impoundment)
1173	KG	Greenbrier-Nicholas	South Fork Cherry River
1174	KGC	Pocahontas-Webster-	Cranberry River
1175		Nicholas	
1176	KGC	Pocahontas	South Fork Cranberry River
1177	KGW	Pocahontas	Tea Creek
1178	KGW	Pocahontas-Webster	Williams River (Above Dyer)
1179	KN	Raleigh	Glade Creek
1180	KN	Summers	Meadow Creek
1181	KN	Fayette	Mill Creek
1182	KN	“	Laurel Creek
1183			(Above Cotton Hill)
1184	KN	Raleigh	Pinch Creek

1185	KN	Monroe	Rich Creek
1186	KN	"	Turkey Creek
1187	KN	Fayette	Dunloup Creek (Downstream
1188			from Harvey Sewage Treatment
1189			Plant)
1190	KN	Mercer	East River (Above Kelleysville)
1191	KN	"	Pigeon Creek
1192	KN	Monroe	Laurel Creek
1193	KNG	Monroe	Kitchen Creek
1194			(Above Gap Mills)
1195	KNG	Greenbrier	Culverson Creek
1196	KNG	"	Milligan Creek
1197	KNG	Greenbrier-Monroe	Second Creek (Rt. 219 Bridge to
1198			Nickell's Mill)
1199	KNG	Greenbrier	North Fork Anthony Creek
1200	KNG	"	Spring Creek
1201	KNG	"	Anthony Creek
1202			(Above Big Draft)
1203	KNG	Pocahontas	Watoga Lake
1204	KNG	"	Beaver Creek
1205	KNG	"	Knapp's Creek
1206	KNG	"	Hills Creek
1207	KNG	"	North Fork Deer Creek
1208			(Above Route 28/5)
1209	KNG	"	Deer Creek
1210	KNG	"	Sitlington Creek
1211	KNG	"	Stoney Creek
1212	KNG	"	Swago Creek
1213	KNG	"	Buffalo Fork (Impoundment)
1214	KNG	"	Seneca (Impoundment)
1215	KNG	"	Greenbrier River
1216			(Above Hosterman)
1217	KNG	"	West Fork-Greenbrier River
1218			(Above the impoundment at the
1219			tannery)
1220	KNG	"	Little River-East Fork
1221	KNG	"	Little River-West Fork
1222	KNG	"	Five Mile Run
1223	KNG	"	Mullenax Run
1224	KNG	"	Abes Run
1225	KNB	Mercer	Marsh Fork
1226	KNB	"	Camp Creek
1227	OG	Wyoming	Pinnacle creek
1228	BST	McDowell	Dry Fork (Above Canebrake)

1229

APPENDIX B

1230 This list contains known waters used as public water sup-
 1231 plies and is not intended to exclude any waters as described in
 1232 section 6.2, herein.

1233	<u>River Basin</u>	<u>County</u>	<u>Operating Company</u>	<u>Source</u>
1234	Shenandoah River			
1235	S	Jefferson	Charlestown Water	Shenandoah River
1236	Potomac River			
1237	P	Jefferson	3-M Company	Turkey Run
1238	P	"	Shepherdstown Water	Potomac River
1239	P	"	Harpers Ferry Water	Elk Run
1240	P	Berkeley	DuPont Potomac River	Potomac River
1241			Works	
1242	P	"	Berkeley County PSD	Le Feure Spring
1243	P	"	Opequon PSD	Quarry Spring
1244	P	"	Hedgesville PSD	Speck Spring
1245	P	Morgan	Paw Paw Water	Potomac River
1246	PSB	Hampshire	Romney Water	South Branch
1247				Potomac River
1248	PSB	"	Peterkin Conference	Mill Run
1249			Center	
1250	PSB	Hardy	Moorefield Municipal	South Fork River
1251			Water	
1252	PSB	Pendleton	U.S. Naval Radio Sta.	South Fork River
1253	PSB	"	Circleville Water Inc.	North Fork of
1254				South Branch,
1255				Potomac River
1256	PSB	Grant	Mountain Top PSD	Mill Creek,
1257				Impoundment
1258	PSB	"	Petersburg Municipal	South Branch,
1259			Water	Potomac
1260				River
1261	PNB	Grant	Island Creek Coal	Impoundment
1262	PNB	Mineral	Piedmont Municipal	Savage River,
1263			Water	Maryland
1264	PNB	"	Keyser Water	New Creek
1265	PNB	"	Fort Ashby PSD	Lake
1266	Monongahela River			
1267	M	Monongalia	Morgantown Water Comm.	Colburn Creek &
1268				Monongahela
1269				River
1270	M	"	Morgantown Ordinance	Monongahela
1271				River
1272			Works	
1273	M	Preston	Preston County PSD	Deckers Creek

1274	M	Monongalia	Blacksville # 1 Mine	Impoundment
1275	M	"	Loveridge Mine	Impoundment
1276	M	"	Consolidation Coal Co.	Impoundment
1277	M	Preston	Mason Town Water	Block Run
1278	MC	Preston	Fibair Inc.	Impoundment
1279	MC	Monongalia	Cheat Neck PSD	Cheat Lake
1280	MC	"	Lakeview County Club	Cheat Lake-Lake
1281				Lynn
1282	MC	"	Union Districk PSD	Cheat Lake-Lake
1283				Lynn
1284	MC	"	Cooper's Rock State	Impoundment
1285				Park
1286	MC	Preston	Kingwood Water	Cheat River
1287	MC	"	Hopemount State Hosp.	Snowy Creek
1288	MC	"	Rowlesburg Water	Keyser Run &
1289				Cheat
1290				River
1291	MC	"	Albright	Cheat River
1292	MC	Tucker	Parsons Water	Shavers & Elk
1293				Lick
1294				Fork
1295	MC	"	Thomas Municipal	Thomas Reservoir
1296	MC	"	Hamrick PSD	Dry Fork
1297	MC	"	Douglas Water System	Long Run
1298	MC	"	Davis Water	Blackwater River
1299	MC	"	Hambleton Water System	Roaring Creek
1300	MC	"	Canaan Valley State	Blackwater River
1301				Park
1302	MC	Pocahontas	Cheat Mt. Sewer	Shavers Lake
1303	MC	"	Snowshoe Co. Water	Shavers Fork
1304	MC	Randolph	Womelsdorf Water	Yokum Run
1305	MW	Harrison	Lumberport Water	Jones Run
1306	MW	"	Clarksburg Water Bd.	West Fork River
1307	MW	"	Bridgeport Mun. Water	Deacons & Hinkle
1308				Creek
1309	MW	"	Salem Water Board	Dog Run
1310	MW	"	West Milford Water	West Fork River
1311	MW	Lewis	W.V. Water-Weston	West Fork River
1312				District
1313	MW	"	Jackson's Mill Camp	Impoundment
1314	MW	"	West Fork River PSD	West Fork River
1315	MW	"	Kennedy Compressor	West Fork River
1316				Station
1317	MW	"	Jane Lew Water Comm.	Hackers Creek
1318	MW	Harrison	Bel-Meadow Country	Lake
1319				Club

1320	MW		"	Harrison Power Station	West Fork River
1321	MW		"	Oakdale Portal	Impoundment
1322	MW		"	Robinson Port	Impoundment
1323	MT		Marion	Fairmont Water Comm.	Tygart River
1324	MT		"	Mannington Water	Impoundment
1325	MT		"	Monongah Water Works	Tygart River
1326	MT		"	Eastern Assoc. Coal Corp	Impoundment
1327	MT		"	Four States Water	Impoundment
1328	MT		Harrison	Shinnston Water Dept.	Tygart River
1329	MT		Taylor	Grafton Water	Tygart River-Lake
1330	MT		Barbour	Phillippi Water	Tygart River
1331	MT		"	Bethlehem Mines Corp.	Impoundment
1332	MT		"	Belington Water Works	Tygart River &
1333				Mill	Run Lake
1334	MT		Randolph	Elkins Municipal Water	Tygart River
1335	MT		"	Beverly Water	Tygart river
1336	MT		"	Valley Water	Tygart River
1337	MT		"	Huttonsville Medium	Tygart River
1338				Security Prison	
1339	MT		"	Mill Creek Water	Mill Creek
1340	MTB		Upshur	Buckhannon Water Board	Buckhannon
1341					River
1342				Ohio River	
1343	O	Zone 1	Hancock	Chester Water & Sewer	Ohio River
1344	O	"	Brooke	City of Weirton	Ohio River
1345	O	"	"	Weirton Steel Division	Ohio River
1346	O	"	Ohio	Wheeling Water	Ohio River
1347	O	"	Tyler	Sistersville Mun. Water	Ohio River
1348	O	"	Pleasants	Pleasants Power Station	Ohio River
1349	O	"	Cabel	Huntington Water Corp.	Ohio River
1350	O	"	Marshall	Mobay Chemical Co.	Ohio River
1351	O	"	Wood	E. I. DuPont	Ohio River
1352	O	Zone 2	Marshall	Cameron Water	Glass House Hollow
1353	O	"	"	New Urindahana Water	Wheeling Creek
1354					System
1355	O	"	Wetzel	Pine Grove Water	North Fork, Fishing
1356					Creek
1357	O	"	Marshall	Consolidated Coal Co.	Impoundment
1358	O	"	Tyler	Middlebourne Water	Middle Island Creek
1359	O	"	Doddridge	West Union Mun. Water	Middle Island Creek
1360	O	"	Mason	Hidden Valley Country	Lake/Impoundment
1361	O	"	Jackson	Ripley Water	Mill Creek
1362	O	"	Wayne	Wayne Municipal Water	Twelve Pole Creek
1363	O	"	"	East Lynn Lake	East Lynn Lake
1364	O	Zone 2	Wayne	Monterey Coal Co.	Impoundment

1365	Little Kanawha			
1366	LK	Wood	Claywood Park PSD	Little Kanawha River
1367				
1368	LK	Calhoun	Grantsville Mun. Water	Little Kanawha River
1369				
1370	LK	Gilmer	Glenville Utility	Little Kanawha River
1371				
1372	LK	"	Consolidated Gas Compressor	Steer Creek
1373				
1374	LK	Braxton	Burnsville Water Works	Little Kanawha River
1375				
1376	LK	Roane	Spencer Water	Spring Creek Mile Tree Reservoir
1377				
1378	LK	Wirt	Elizabeth Water	Little Kanawha River
1379				
1380	LKH	Ritchie	Cairo Water	North Fork Hughes River
1381				
1382	LKH	"	Harrisville Water	North Fork Hughes River
1383				
1384	LKH	"	Pennsboro Water	North Fork Hughes River
1385				
1386	Kanawha River			
1387	K	Putnam	Buffalo Water	Cross Creek
1388	K	"	Winfield Water	Poplar Fork & Crooked Creek
1389				
1390	K	"	South Putnam PSD	Poplar Fork & Crooked Creek
1391				
1392	K	Kanawha	Cedar Grove Water	Kanawha River
1393	K	"	Pratt Water	Kanawha River
1394	K	Fayette	Armstrong PSD	Kanawha River & Gum Hollow
1395			PO-K1-CO-EL	
1396	K	"	Kanawha Water Co.-	Unnamed Tributary
1397				
1398				Kanawha Beards Fork River
1399	K	Kanawha	Midland Trail School	Impoundment
1400	K	"	Cedar Coal Co.	Impoundment
1401	K	Fayette	Elkem Metals Co.	Kanawha River
1402	K	"	Deepwater PSD	Kanawha River
1403	K	"	Kanawha Falls PSD	Kanawha River
1404	K	"	W.V. Water-Montgomery	Kanawha River
1405	Pocatalico River			
1406	KP	Kanawha	Sissonville PSD	Pocatalico River
1407	KP	Roane	Walton PSD	Silcott Fork Dam

1408	Coal River			
1409	KC	Kanawha	St. Albans Water	Coal River
1410	KC	"	Washington PSD	Coal River
1411	KC	Lincoln	Lincoln PSD	Coal River
1412	KC	Boone	Coal River PSD	Coal River
1413	KC	"	Whitesville PSD	Coal River
1414	KC	Raleigh	Armco Mine 10	Marsh Fork
1415	KC	"	Armco Steel-Montc.	Coal River
1416	Stickney			
1417	KC	Raleigh	Peabody Coal	Coal River
1418	KC	"	Stephens Lake Park	Lake Stephens
1419	KC	Boone	W.V. Water-	Little Coal River
1420			Madison Dist.	
1421	KC	"	Van PSD	Pond Fork
1422	KC	Raleigh	Consol. Coal Co.	Workmans Creek
1423	KC	Boone	Water Ways Park	Coal River
1424	Elk River			
1425	KE	Kanawha	Clendenin Water	Elk River
1426	KE	"	W.V. Water-Kanawha	Elk River
1427	Valley District			
1428	KE	Kanawha	Pinch PSD	Elk River
1429	KE	Clay	Clay Waterworks	Elk River
1430	KE	"	Prociuous PSD	Elk River
1431	KE	Braxton	Flatwoods-Canoe Run	PSD
1432				Elk River
1433	KE	"	Sugar Creek PSD	Elk River
1434	KE	"	W.V. Water-	Elk River
1435			Gassaway Dist.	
1436	KE	"	W.V. Water-Sutton Dist.	Elk River
1437	KE	Webster	W.V. Water-	Elk River
1438			Webster Springs	
1439	KE		Holly River State Park	Holly River
1440	Gauley River			
1441	KG	Nicholas	Craigsville PSD	Gauley River
1442	KG	"	Summersville Water	Impoundment/ Muddlety Creek
1443				
1444	KG	"	Nettie-Leivasy PSD	Jim Branch
1445	KG	Webster	Cowen PSD	Gauley River
1446	KG	Nicholas	Wilderness PSD	Anglins Creek & Meadow River
1447				
1448	KG	"	Richwood Water	North Fork Cherry River
1449				

1450	New River			
1451	KN	Fayette	Ames Heights Water	Mill Creek
1452	KN	"	Mt. Hope Water	Impounded Mine (Surface)
1453				
1454	KN	"	Ansted Municipal Water	Mill Creek
1455	KN	"	Fayette Co. Park	Impoundment
1456	KN	"	New River Gorge	Impoundment
1457			Campground	
1458	KN	"	Fayetteville Water	Wolfe Creek
1459	KN	Raleigh	Beckley Water	Glade Creek
1460	KN	"	Westmoreland Coal Co.	Farley Branch
1461	Bluestone River			
1462	KNB	Summers	Jumping Branch-Nimitz	Mt. Valley Lake
1463	KNB	"	Bluestone Conf. Center	Bluestone Lake
1464	KNB	"	Pipestem State Park	Impoundment
1465	KNB	Mercer	Town of Athens	Impoundment
1466	KNB	"	Bluewell PSD	Impoundment
1467	KNB	"	Bramwell Water	Impoundment
1468	KNB	"	Green Valley-	Bailey Reservoir
1469			Glenwood PSD	
1470	KNB	"	Kelly's Tank	Spring
1471	KNB	"	W.V. Water Princeton	Impoundment/ Brusch Creek
1472				
1473	KNB	"	Lashmeet PSD	Impoundment
1474	KNB	"	Pinnacle Water Assoc.	Mine
1475	KNB	"	W.V. Water Bluefield	Impoundment
1476	Greenbrier River			
1477	KNG	Summers	W.V. Water Hinton	Greenbrier River & New River
1478				
1479	KNG	"	Big Bend PSD	Greenbrier River
1480	KNG	Greenbrier	Alderson Water Dept.	Greenbrier River
1481	KNG	"	Ronceverte Water	Greenbrier River
1482	KNG	"	Lewisburg Water	Greenbrier River
1483	KNG	Pocahontas	Denmar State Hospital	Greenbrier River
1484			Water	
1485	KNG	"	City of Marlinton Water	Knapp Creek
1486	KNG	"	Cass Scenic Railroad	Leatherbark Creek
1487	KNG	"	Upper Greenbrier PSD	Greenbrier River
1488	KNG	"	The Hermitage	Greenbrier
1489			Guyandotte River	
1490	OG	Cabell	Salt Rock PSD	Guyandotte River
1491	OG	Lincoln	West Hamlin Water	Guyandotte River

1492	OG	Logan	Logan Water Board	Guyandotte River
1493	OG	"	Man Water Works	Guyandotte River
1494	OG	"	Buffalo Creek PSD	Buffalo Creek/ Mine/Wells
1495				
1496	OG	Logan	Chapmanville	Guyandotte River
1497	OG	"	Logan PSD	Whitman Creek/ Guyandotte River
1498				
1499	OG	Mingo	Gilbert Water	Guyandotte River
1500	OG	Wyoming	Oceana Water	Laurel Fork
1501	OG	"	Glen Rogers PSD	Impoundment
1502	OG	"	Pineville Water	Pinnacle Creek/ Guyandotte River
1503				
1504	OG	Raleigh	Raleigh Co. PSD-Amigo	Tommy Creek
1505	OMG	Cabell	Milton Water Works	Guyandotte River
1506	OMG	"	Culloden PSD	Indian Fork Creek
1507	OMG	Putnam	Hurricane Municipal Water	Impoundment
1508				
1509	OMG	"	Lake Washington PSD	Lake Washington Big Sandy River
1510				
1511	BS	Wayne	Kenova Municipal Water	Big Sandy River
1512	BS	"	Fort Gay Water	Tug Fork
1513	BST	Mingo	Kermit Water	Tug Fork
1514	BST	"	Matewan Water	Tug Fork
1515	BST	"	A & H Coal Co., Inc.	Impoundment
1516	BST	"	Williamson Water	Impoundment
1517	BST	McDowell	City of Welch	Impoundment/Wells
1518	BST	"	City of Gary	Impoundment/Mine

1519

APPENDIX C

1520

CATEGORY E-3 - POWER PRODUCTION

1521 This list contains known power production facilities and is
 1522 not intended to exclude any waters as described in section 6.6.c,
 1523 herein.

1524	<u>River Basin</u>	<u>County</u>	<u>Station Name</u>	<u>Operating Company</u>
1525	Monongahela River			
1526	M	Monongalia	Fort Martin Power Station	Monongahela
1527				Power
1528	M	Marion	Rivesville Station	Monongahela
1529				Power
1530	MC	Preston	Albright Station	Monongahela
1531				Power
1532				
1533	Potomac	Grant	Mt. Storm Power Station	Virginia Electric &
1534				Power Company
1535	Ohio River			
1536	O - Zone 1	Wetzel	Hannibal (Hydro)	Ohio Power
1537	O " "	Marshall	Kammer	Ohio Power
1538	O " "	"	Mitchell	Ohio Power
1539	O " "	Pleasants	Pleasants	Station
1540				Monongahela
1541				Power
1542	O " "	"	Willow Island Station	Monongahela
1543				Power
1544	O " "	Mason	Phillip Sporn Plant	Central Operating
1545				(AEP)
1546	O " "	"	Racine (Hydro)	Ohio Power
1547	O " "	"	Mountaineer	Appalachian Power Co.
1548	K	Putnam	Winfield (Hydro)	Appalachian Power Co.
1549	K	Kanawha	Marmet (Hydro)	Appalachian Power Co.
1550	K	"	London (Hydro)	Appalachian Power Co.
1551	K	"	Kanawha River	Appalachian Power Co.
1552	K	"	John E. Amos	Appalachian Power Co.

1553

APPENDIX D

1554

CATEGORY C - WATER CONTACT RECREATION

1555

1556 This list contains waters known to be used for water contact
1557 recreation and is not intended to exclude any waters as described
1558 in section 6.4, herein.

1558	<u>River Basin</u>	<u>Stream Code</u>	<u>Stream</u>	<u>County</u>
1559	Shenandoah	S	Shenandoah River	Jefferson
1560	Potomac	P	Potomac River	Jefferson
1561		P	" "	Hampshire
1562		P	" "	Berkeley
1563		P	" "	Morgan
1564		P-9	Sleepy Creek &	
1565				Berkeley
1566			Meadow Branch	
1567		P-9-G-1	North Fork of	
1568			Morgan	
1569			Indian Run	
1570	South Branch	PSB	South Branch of	Hampshire
1571			Potomac River	
1572		PSB	" "	Hardy
1573		PSB	" "	Grant
1574		PSB-21-X	Hawes Run	Pendleton
1575		PSB-25-C-2	Spring Run	Grant
1576		PSB-28	North Fork	Grant
1577			South Branch	
1578	Potomac River			
1579	North Branch	PNB	North Branch of	Mineral
1580			Potomac River	
1581		PNB-4-EE	North Fork	Grant
1582	Patterson Creek			
1583		PNB-7-H	Linton Creek	
1584			Grant	
1585		PNB-17	Stoney River-	Grant
1586			Mt. Storm Lake	
1587		PC	Cacapon River	Hampshire
1588	Monongalia			
1589	Cheat	MC	Cheat Lake/	Monongalia/
1590			Cheat River	Preston
1591		MC	Alpine Lake	Preston

1592		MC-6	Coopers Rock Lake/	Monongalia
1593			Quarry Run	
1594		MC-12	Big Sandy Creek	Preston
1595		MSC	Shavers Fork	Randolph
1596		MTN	Middle Fork River	Barbour/
1597				Randolph/
1598				Upshur
1599		MW	West Fork River	Harrison
1600				
1601		MW-18	Stonecoal Creek/	Lewis
1602	Stonecoal Lake			
1603	Ohio	O	OhioRiver	Brooke/
1604				Cabell/
1605				Hancock/
1606				Jackson/
1607				Marshall/
1608				Mason/
1609				Ohio/
1610				Pleasants/
1611				Tyler/
1612				WayneWood
1613				/Wetzel
1614		O-2-H	Beech Fork of	Wayne
1615			Twelvepole Creek/Beech	
1616	Fork Lake			
1617		O-2-Q	East Fork of	Wayne
1618			Twelvepole Creek/East	
1619	Lynn Lake			
1620		O-3	Fourpole Creek	Cabell
1621		O-21	Old Town Creek/	Mason
1622			McClintic Ponds	
1623		OMI	Middle Island Creek/	Doddridge
1624			Crystal Lake	
1625		OG	Guyandotte River	Cabell
1626		OG	Guyandotte River/	Wyoming
1627			R. D. Bailey Lake	
1628		OGM	Mud River	Cabell
1629				
1630	Little Kanawha	LK	Little Kanawha River/	
1631			Braxton	
1632			Burnsville Lake	
1633	Kanawha	K	Kanawha River	Fayette/

1634			Kanawha/
1635			Mason/
1636			Putnam
1637		K-1 Unnamed Tributary	Mason
1638	Krodel Lake		
1639		KC Coal River	Kanawha
1640		KC-45-Q Stephens Branch/ Lake Stephens	Raleigh
1641			
1642		KE Elk River	Kanawha/
1643			Clay/
1644			Braxton/
1645			Webster/
1646			Randolph
1647		KE Sutton lake	Braxton
1648		KN New River	Fayette/
1649			Raleigh/
1650			Summers
1651		KN-26-F Little Beaver Creek	Raleigh
1652		KNG Greenbrier River	Greenbrier/
1653			Pocahontas/
1654			Summers
1655		KNG-23-E-1 Little Devil Creek/ Moncove Lake	Monroe
1656			
1657		KNG-28 Anthony Creek	Greenbrier
1658		KNG-28-P Meadow Creek/ Lake Sherwood	Greenbrier
1659			
1660		KNB Bluestone River/ Bluestone Lake	Summers
1661			
1662		KG Gauley River	Webster
1663		KG Gauley River/ Summersville Lake	Nicholas
1664			
1665		KGW Williams River	Webster

APPENDIX E, TABLE 1

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LEGISLATIVE RULES

1877

PARAMETER	USE DESIGNATION						
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES
	B1, B4		B2		C ³	A ⁴	
	ACUTE ¹	CHRON ²	ACUTE ¹	CHRON ²			

8.1 Dissolved Aluminum (ug/l) Not to exceed:	750xCF ⁵	87xCF ⁵	750xCF ⁵	87xCF ⁵			
8.2 Ammonia (ug/l): Un-ionized ammonia (UA) shall be determined from values of total ammonia-N, pH and temperature according to the following equation: $UA = \frac{1.2(\text{total ammonia-N})}{1 + 10^{(pka - pH)}}$ where pka = 0.0902 + 2730/(273.2 + T) and T = temperature (°C) The concentration of un-ionized ammonia (NH ₃) shall not exceed 50 ug/l.							50

APPENDIX E, TABLE 1

PARAMETER	USE DESIGNATION						
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES
	B1, B4		B2		C ³	A ⁴	
	ACUTE ¹	CHRON ²	ACUTE ¹	CHRON ²			
8.2.1 Acute and chronic aquatic life criteria for ammonia shall be determined using the National Criterion for Ammonia in Fresh Water ^d from USEPA's 1999 Update of Ambient Water Quality Criteria for Ammonia (EPA-822-R-99-014, December 1999)	X	X	X	X			
8.3 Antimony (ug/l) Not to exceed:					4300	14	
8.4 Arsenic ^b (ug/l) Not to exceed:					50	50	100
8.4.1 Dissolved Trivalent Arsenic Not to exceed:	360 x CF ⁵	190 x CF ⁵	360 x CF ⁵	190 x CF ⁵			
8.7 Cadmium (ug/l) Hardness Soluble Cd (mg/l CaCO ₃) 0 - 35 1.0 36 - 75 2.0 76 - 150 5.0 > 150 10.0						X	

APPENDIX E, TABLE 1

PARAMETER	USE DESIGNATION						
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES
	B1, B4		B2		C ³	A ⁴	
	ACUTE ¹	CHRON ²	ACUTE ¹	CHRON ²			
8.7.1 Not to exceed 10 ug/l in the Ohio River (O Zone 1) main stem (see section 7.1.d, herein)						X	
8.7.3 The four-day average concentration of dissolved cadmium shall not exceed the value determined by the following equation: $Cd = e^{(0.7852[\ln(\text{hardness})]-3.490)} \times CF^5$		X		X			
8.7.4 The one-hour average concentration of dissolved cadmium shall not exceed the value determined by the following equation: $Cd = e^{(1.128[\ln(\text{hardness})]-3.828)} \times CF^5$	X		X				
8.8 Chloride (mg/l) Not to exceed:	860	230	860	230	250	250	

APPENDIX E, TABLE 1

PARAMETER	USE DESIGNATION						
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES
	B1, B4		B2		C ³	A ⁴	
	ACUTE ¹	CHRON ²	ACUTE ¹	CHRON ²			

8.9.1 Chromium, dissolved hexavalent (ug/l): Not to exceed:	16 x CF ⁵	11 x CF ⁵	16 x CF ⁵	7.2 x CF ⁵		50	
8.9.2 Chromium, trivalent (ug/l) The one-hour average concentration of dissolved trivalent chromium shall not exceed the value determined by the following equation: $\exp\{0.8190[\ln(\text{hardness})]+3.7256\} \times (\text{CF}^5)$	X		X				
8.9.3 The four-day average concentration of dissolved trivalent chromium shall not exceed the value determined by the following concentration: $\exp\{0.8190[\ln(\text{hardness})]+0.6848\} \times (\text{CF}^5)$.		X		X			
8.10 Copper (ug/l) Not to exceed:						1000	
8.10.1 The four-day average concentration of dissolved copper shall not exceed the value determined by the following equation ^a : $\text{Cu} = e^{(0.8545[\ln(\text{hardness})]-1.465)} \times \text{CF}^5$		X		X			

APPENDIX E, TABLE 1

PARAMETER	USE DESIGNATION						
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES
	B1, B4		B2		C ³	A ⁴	
	ACUTE ¹	CHRON ²	ACUTE ¹	CHRON ²			
8.10.2 The one-hour average concentration of dissolved copper shall not exceed the value determined by the following equation*: $Cu = e^{(0.9422[\ln(\text{hardness})]-1.464)} \times CF^5$	X		X				
8.11 Cyanide (ug/l) (As free cyanide HCN+CN ⁻) Not to exceed:	22	5.0	22	5.0	5.0	5.0	
8.12 Dissolved Oxygen ^c : not less than 5 mg/l at any time.	X				X	X	X
8.12.1 Kanawha River main stem, Zone 1 - Not less than 4.0 mg/l at any time.	X						

APPENDIX E, TABLE 1

PARAMETER	USE DESIGNATION						
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES
	B1, B4		B2		C ³	A ⁴	
	ACUTE ¹	CHRON ²	ACUTE ¹	CHRON ²			
8.12.2 Ohio River main stem - the average concentration shall not be less than 5.0 mg/l per calendar day and shall not be less than 4.0 mg/l at any time or place outside any established mixing zone - provided that a minimum of 5.0 mg/l at any time is maintained during the April 15-June 15 spawning season.	X						
8.12.3 Not less than 7.0 mg/l in spawning areas and in no case less than 6.0 mg/l at any time.			X				
8.13 Fecal Coliform: Maximum allowable level of fecal coliform content for Primary Contact Recreation (either MPN or MF) shall not exceed 200/100 ml as a monthly geometric mean based on not less than 5 samples per month; nor to exceed 400/100 ml in more than ten percent of all samples taken during the month.					X	X	

APPENDIX E, TABLE 1

PARAMETER	USE DESIGNATION						
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES
	B1, B4		B2		C ³	A ⁴	
	ACUTE ¹	CHRON ²	ACUTE ¹	CHRON ²			
8.13.1 Ohio River main stem (zone 1) - During the non-recreational season (November through April only) the maximum allowable level of fecal coliform for the Ohio River (either MPN or MF) shall not exceed 2000/100 ml as a monthly geometric mean based on not less than 5 samples per month.					X		
8.14 Fluoride (mg/l) Not to exceed:						1.4	
8.14.1 Not to exceed 2.0 for category D uses.							X
8.15 Iron ^c (mg/l) Not to exceed:		1.5		0.5		1.5	

APPENDIX E, TABLE 1

PARAMETER	USE DESIGNATION						
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES
	B1, B4		B2		C ³	A ⁴	
	ACUTE ¹	CHRON ²	ACUTE ¹	CHRON ²			
8.16 Lead (ug/l) Not to exceed:						50	
8.16.1 The four-day average concentration of dissolved lead shall not exceed the value determined by the following equation*: $P_b = e^{(1.273[\ln(\text{hardness})] - 4.705)} \times CF^5$		X		X			
8.16.2 The one-hour average concentration of dissolved lead shall not exceed the value determined by the following equation*: $P_b = e^{(1.273[\ln(\text{hardness})] - 1.46)} \times CF^5$	X		X				
8.17 Manganese (mg/l) (see 6.2.d) Not to exceed:						1.0	
8.18 Mercury The total organism body burden of any aquatic species shall not exceed 0.5 ug/g as methylmercury.					0.5	0.5	

APPENDIX E, TABLE 1

PARAMETER	USE DESIGNATION						
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES
	B1, B4		B2		C ³	A ⁴	
	ACUTE ¹	CHRON ²	ACUTE ¹	CHRON ²			
8.18.1 Total mercury in any unfiltered water sample shall not exceed (ug/l):	2.4		2.4		0.15	0.14	
8.18.2 Methylmercury (water column) Not to exceed (ug/l):		.012		.012			
8.19 Nickel (ug/l) Not to exceed:					4600	510	
8.19.1 The four-day average concentration of dissolved nickel shall not exceed the value determined by the following equation ^a : $Ni = e^{(0.846[\ln(\text{hardness})+1.1645]} \times CF^5$		X		X			
8.19.2 The one-hour average concentration of dissolved nickel shall not exceed the value determined by the following equation ^a : $Ni = e^{(0.846[\ln(\text{hardness})+3.361]} \times CF^5$	X		X				

APPENDIX E, TABLE 1

PARAMETER	USE DESIGNATION						
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES
	B1, B4		B2		C ³	A ⁴	
	ACUTE ¹	CHRON ²	ACUTE ¹	CHRON ²			
8.20 Nitrate (as Nitrate-N) (mg/l)						10	
8.21 Nitrite (as Nitrite-N) (mg/l) Not to exceed:	1.0		.060				
8.22 Organics							
Chlordane ^b (ng/l)	2400	4.3	2400	4.3	0.46	0.46	0.46
DDT ^b (ng/l)	1100	1.0	1100	1.0	0.024	0.024	0.024
Aldrin ^b (ng/l)	3.0		3.0		0.071	0.071	0.071
Dieldrin ^b (ng/l)	2500	1.9	2500	1.9	0.071	0.071	0.071
Endrin (ng/l)	180	2.3	180	2.3	2.3	2.3	2.3
Toxaphene ^b (ng/l)	730	0.2	730	0.2	0.73	0.73	0.73
PCB ^b (ng/l)		14.0		14.0	0.045	0.044	0.045

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PARAMETER	USE DESIGNATION						
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES
	B1, B4		B2		C ³	A ⁴	
	ACUTE ¹	CHRON ²	ACUTE ¹	CHRON ²			
Methoxychlor (ug/l)		0.03		0.03	0.03	0.03	0.03
Dioxin (2,3,7,8- TCDD) ^b (pg/l)					0.014	0.013	0.014
Acrylonitrile ^b (ug/l)					0.66	0.059	
Benzene ^b (ug/l)					71	0.66	
1,2-dichlorobenzene (mg/l)					17	2.7	
1,3-dichlorobenzene (mg/l)					2.6	0.4	
1,4-dichlorobenzene (mg/l)					2.6	0.4	
2,4-dinitrotoluene ^b (ug/l)					9.1	0.11	
Hexachlorobenzene ^b (ng/l)					0.77	0.72	
Carbon tetrachloride ^b (ug/l)					4.4	0.25	

APPENDIX E, TABLE 1

PARAMETER	USE DESIGNATION						
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES
	B1, B4		B2		C ³	A ⁴	
	ACUTE ¹	CHRON ²	ACUTE ¹	CHRON ²			
Chloroform ^b (ug/l)					470	0.19	
Halomethanes (ug/l)					15.7	0.19	
1,2-dichloroethane ^b (ug/l)					99	0.035	
1,1,1-trichloroethane ^b (mg/l)						12	
1,1,1,2-tetrachloroethane (ug/l)					11	0.17	
1,1-dichloroethylene ^b (ug/l)					3.2	0.03	
Trichloroethylene ^b (ug/l)					81	2.7	
Tetrachloroethylene ^b (ug/l)					8.85	0.8	
Toluene ^b (mg/l)					200	6.8	

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PARAMETER	USE DESIGNATION						
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES
	B1, B4		B2		C ³	A ⁴	
	ACUTE ¹	CHRON ²	ACUTE ¹	CHRON ²			
Polynuclear Aromatic Hydrocarbons (PAH) ^b (ug/l)					0.031	.0028	
Phthalate esters (ug/l)		3.0		3.0			
Vinyl chloride ^b (chloroethene)(ug/l)					525	2.0	
alpha-BHC (alpha- Hexachloro-cyclohexane) ^b (ug/l)					0.013	.0039	
beta-BHC(beta- Hexachloro-cyclohexane) ^b (ug/l)					0.046	0.014	
gamma-BHC (gamma- Hexachloro-cyclohexane) ^b (ug/l)	2.0	0.08	2.0	0.08	0.063	0.019	
Chlorobenzene (mg/l)					21	0.68	
Ethylbenzene (mg/l)					29	3.1	

APPENDIX E, TABLE 1

PARAMETER	USE DESIGNATION						
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES
	B1, B4		B2		C ³	A ⁴	
	ACUTE ¹	CHRON ²	ACUTE ¹	CHRON ²			
Heptachlor ^b (ng/l)	520	3.8	520	3.8	0.21	0.21	
2-methyl-4,6-Dinitrophenol (ug/l)					765	13.4	
Fluoranthene (ug/l)					370	300	
8.22.1 The organic chemicals listed in '8.22 shall not exceed the specified water quality criteria. When the specified criteria are less than the practical laboratory quantification level, instream values will be calculated from discharge concentrations and flow rates where applicable.							
8.23 pH ^c No values below 6.0 nor above 9.0. Higher values due to photosynthetic activity may be tolerated.	X	X	X	X	X	X	X

APPENDIX E, TABLE 1

PARAMETER	USE DESIGNATION						
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES
	B1, B4		B2		C ³	A ⁴	
	ACUTE ¹	CHRON ²	ACUTE ¹	CHRON ²			
8.24 Phenolic Materials							
8.24.1 Phenol (ug/l) Not to exceed:	10,200	2,560	10,200	2,560	4,600,000	3.5 mg/l 21,000	
8.24.2 2-Chlorophenol (ug/l) Not to exceed:					400	120	
8.24.3 2,4-Dichlorophenol (ug/l) Not to exceed:					790	93	
8.24.4 2,4-Dimethylphenol (ug/l) Not to exceed:					2300	540	
8.24.5 2,4-Dinitrophenol (ug/l) Not to exceed:					14,000	70	
8.24.6 Pentachlorophenol ^b (ug/l)					8.2	0.28	
8.24.6.a The one-hour average concentration of pentachlorophenol shall not exceed the value determined by the following equation: $\exp(1.005(\text{pH})-4.869)$	X		X				

APPENDIX E, TABLE 1

PARAMETER	USE DESIGNATION						
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES
	B1, B4		B2		C ³	A ⁴	
	ACUTE ¹	CHRON ²	ACUTE ¹	CHRON ²			
8.24.6.b The 4-day average concentration of pentachlorophenol shall not exceed the value determined by the following equation: $\exp(1.005(\text{pH})-5.134)$.		X		X			
8.24.7 2,4,6-Trichlorophenol ^b (ug/l) Not to exceed:					6.5	2.1	
8.25 Radioactivity: Gross Beta activity not to exceed 1000 picocuries per liter (pCi/l), nor shall activity from dissolved strontium-90 exceed 10 pCi/l, nor shall activity from dissolved alpha emitters exceed 3 pCi/l.	X		X		X	X	X
8.25.1 Gross total alpha particle activity (including radium-226 but excluding radon and uranium shall not exceed 15 pCi/l and combined radium-226 and radium-228 shall not exceed 5pCi/l; provided that the specific determination of radium-226 and radium-228 are not required if dissolved particle activity does not exceed 5pCi/l;							

APPENDIX E, TABLE 1

PARAMETER	USE DESIGNATION						
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES
	B1, B4		B2		C ³	A ⁴	
	ACUTE ¹	CHRON ²	ACUTE ¹	CHRON ²			
the concentration of tritium shall not exceed 20,000 pCi/l; the concentration of total strontium-90 shall not exceed 8 pCi/l in the Ohio River main stem.	X		X		X	X	X
8.26 Selenium (ug/l) Not to exceed:	20	5	20	5		10	
8.27 Silver (ug/l) <u>Hardness</u> <u>Silver</u> 0-50 1 51-100 4 101-200 12 >201 24				X		X	
8.27.1 0-50 1 51-100 4 101-200 12 201-400 24 401-500 30 501-600 43		X					

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APPENDIX E, TABLE 1

PARAMETER	USE DESIGNATION						
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES
	B1, B4		B2		C ³	A ⁴	
	ACUTE ¹	CHRON ²	ACUTE ¹	CHRON ²			
8.27.2 The one-hour average concentration of dissolved silver shall not exceed the value determined by the following equation: $Ag=e^{(1.72(\ln(\text{hardness})-6.52))} \times CF^5$	X		X				
8.28 Temperature Temperature rise shall be limited to no more than 5°F above natural temperature, not to exceed 87°F at any time during months of May through November and not to exceed 73°F at any time during the months of December through April. During any month of the year, heat should not be added to a stream in excess of the amount that will raise the temperature of the water more than 5°F above natural temperature. In lakes and reservoirs, the temperature of the epilimnion should not be raised more than 3°F by the addition of heat of artificial origin. The normal daily and seasonable temperature fluctuations that existed before the addition of heat due to other natural causes should be maintained.	X						

APPENDIX E, TABLE 1

PARAMETER	USE DESIGNATION																
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES										
	B1, B4		B2		C ³	A ⁴											
	ACUTE ¹	CHRON ²	ACUTE ¹	CHRON ²													
8.28.1 For the Kanawha River Main Stem (K-1): Temperature rise shall be limited to no more than 5°F above natural temperature, not to exceed 90°F in any case.	X																
8.28.2 For the Bluestone R (KNB), Bluestone Lake (KN-60) East River (KNE), New River (KN), Gauley R. (KG) and Greenbrier River (KNG): Temperature rise shall be limited to no more than 5°F above natural temperature, not to exceed 81°F at any time during the months of May through November and not to exceed 73°F at any time during December through April.			X														
8.28.3 No heated effluents will be discharged in the vicinity of spawning areas. The maximum temperatures for cold waters are expressed in the following table: <table border="1" style="margin-left: 20px;"> <thead> <tr> <th></th> <th>Daily Mean °F</th> <th>Hourly Max °F</th> </tr> </thead> <tbody> <tr> <td>Oct-Apr</td> <td>50</td> <td>55</td> </tr> <tr> <td>Sep-May</td> <td>58</td> <td>62</td> </tr> <tr> <td>Jun-Aug</td> <td>66</td> <td>70</td> </tr> </tbody> </table>		Daily Mean °F	Hourly Max °F	Oct-Apr	50	55	Sep-May	58	62	Jun-Aug	66	70			X		
	Daily Mean °F	Hourly Max °F															
Oct-Apr	50	55															
Sep-May	58	62															
Jun-Aug	66	70															

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PARAMETER	USE DESIGNATION						
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES
	B1, B4		B2		C ³	A ⁴	
	ACUTE ¹	CHRON ²	ACUTE ¹	CHRON ²			

<p>8.28.4 For Ohio River Main Stem (01)(section 7.1.d, herein):</p> <p>Period Inst.</p> <table border="1"> <thead> <tr> <th>Dates</th> <th>Ave.</th> <th>Max.</th> </tr> </thead> <tbody> <tr><td>Jan 1-31</td><td>45°F</td><td>50°F</td></tr> <tr><td>February</td><td>45</td><td>50</td></tr> <tr><td>March 1-15</td><td>51</td><td>56</td></tr> <tr><td>March 16-31</td><td>54</td><td>59</td></tr> <tr><td>April 1-15</td><td>58</td><td>64</td></tr> <tr><td>April 16-30</td><td>64</td><td>69</td></tr> <tr><td>May 1-15</td><td>68</td><td>73</td></tr> <tr><td>May 16-31</td><td>75</td><td>80</td></tr> <tr><td>June 1-15</td><td>80</td><td>85</td></tr> <tr><td>June 16-30</td><td>83</td><td>87</td></tr> <tr><td>July 1-31</td><td>84</td><td>89</td></tr> <tr><td>August 1-31</td><td>84</td><td>89</td></tr> <tr><td>Sept 1-15</td><td>84</td><td>87</td></tr> <tr><td>Sept 16-30</td><td>82</td><td>86</td></tr> <tr><td>Oct 1-15</td><td>77</td><td>82</td></tr> <tr><td>Oct 16-31</td><td>72</td><td>77</td></tr> <tr><td>Nov 1-30</td><td>67</td><td>72</td></tr> <tr><td>Dec 1-31</td><td>52</td><td>57</td></tr> </tbody> </table>	Dates	Ave.	Max.	Jan 1-31	45°F	50°F	February	45	50	March 1-15	51	56	March 16-31	54	59	April 1-15	58	64	April 16-30	64	69	May 1-15	68	73	May 16-31	75	80	June 1-15	80	85	June 16-30	83	87	July 1-31	84	89	August 1-31	84	89	Sept 1-15	84	87	Sept 16-30	82	86	Oct 1-15	77	82	Oct 16-31	72	77	Nov 1-30	67	72	Dec 1-31	52	57	X					
Dates	Ave.	Max.																																																													
Jan 1-31	45°F	50°F																																																													
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PARAMETER	USE DESIGNATION						
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES
	B1, B4		B2		C ³	A ⁴	
	ACUTE ¹	CHRON ²	ACUTE ¹	CHRON ²			
8.29 Thallium (ug/l)					6.3	1.7	
8.30 Threshold odor ^c Not to exceed a threshold odor number of 8 at 104°F as a daily average.		X		X	X	X	
8.31 Total Residual Chlorine (ug/l - measured by amperometric or equivalent method) Not to exceed:	19	11					
8.31.1 No chlorinated discharge allowed				X			
8.32 Turbidity No point or non-point source to West Virginia's waters shall contribute a net load of suspended matter such that the turbidity exceeds 10 NTU's over background turbidity when the background is 50 NTU or less, or have more than a 10% increase in turbidity (plus 10 NTU minimum) when the background turbidity is more than 50 NTUs.							

APPENDIX E, TABLE 1

PARAMETER	USE DESIGNATION						
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES
	B1, B4		B2		C ³	A ⁴	
	ACUTE ¹	CHRON ²	ACUTE ¹	CHRON ²			
This limitation shall apply to all earth disturbance activities and shall be determined by measuring stream quality directly above and below the area where drainage from such activity enters the affected stream. Any earth disturbing activity continuously or intermittently carried on by the same or associated persons on the same stream or tributary segment shall be allowed a single net loading increase.		X		X	X	X	
8.32.1 This rule shall not apply to those activities at which Best Management Practices in accordance with the State's adopted 208 Water Quality Management Plan are being utilized, maintained and completed on a site-specific basis as determined by the appropriate 208 cooperative or an approved Federal or State Surface Mining Permit is in effect. This exemption shall not apply to Trout Waters.		X			X	X	

APPENDIX E, TABLE 1

PARAMETER	USE DESIGNATION						
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES
	B1, B4		B2		C ³	A ⁴	
	ACUTE ¹	CHRON ²	ACUTE ¹	CHRON ²			
8.33 Zinc (ug/l) The four-day average concentration of dissolved zinc shall not exceed the value determined by the following equation ^a : $Zn = e^{(0.8473[\ln(\text{hardness})]+0.7614)} \times CF^5$		X		X			
8.33.1 The one-hour average concentration of dissolved zinc shall not exceed the value determined by the following equation ^a : $Zn = e^{(0.8473[\ln(\text{hardness})]+0.8604)} \times CF^5$	X			X			

- 1 One hour average concentration not to be exceeded more than once every three years on the average, unless otherwise noted.
- 2 Four-day average concentration not to be exceeded more than once every three years on the average, unless otherwise noted.
- 3 These criteria have been calculated to protect human health from toxic effects through fish consumption, unless otherwise noted.
- 4 These criteria have been calculated to protect human health from toxic effects through drinking water and fish consumption, unless otherwise noted.
- 5 The appropriate Conversion Factor (CF) is a value used as a multiplier to derive the dissolved aquatic life criterion is found in Appendix E, Table 2.

1666 a Hardness as calcium carbonate (mg/l). The minimum hardness
 1667 allowed for use in this equation shall not be less than 25 mg/l, even
 1668 if the actual ambient hardness is less than 25 mg/l. The maximum
 1669 hardness value for use in this equation shall not exceed 400 mg/l
 1670 even if the actual hardness is greater than 400 mg/l.

1671 b Known or suspected carcinogen. Human health standards are for
 1672 a risk level of 10^{-6} .

1673 c May not be applicable to wetlands (B4) - site-specific criteria are
 1674 desirable.

1675 d The early life stage equation in the National Criterion shall be
 1676 used to establish chronic criteria throughout the state unless the
 1677 applicant demonstrates that no early life stages of fish occur in the
 1678 affected water(s).

1679 **APPENDIX E**

1680 **TABLE 2**

1681 **Conversion Factors**

1682 Metal	Acute	Chronic
1683 Aluminum	1.000	1.000
1684 Arsenic (III)	1.000	1.000
1685 Cadmium	$1.136672 - [(\ln \text{hardness}) (0.041838)]$	$1.101672 - [(\ln \text{hardness}) (0.041838)]$
1686 Chromium (III)	0.316	0.860
1687 Chromium(VI)	0.982	0.962
1688 Copper	0.960	0.960
1689 Lead	$1.46203 - [(\ln \text{hardness}) (0.145712)]$	$1.46203 - [(\ln \text{hardness}) (0.145712)]$
1690 Nickel	0.998	0.997
1691 Silver	0.85	N/A
1692 Zinc	0.978	0.986

1693

APPENDIX F

1694

ANTIDegradation Implementation

1695

PROCEDURES1696 **46-1-4A. Applicability.**

1697 **4A.1.** Except as noted, the antidegradation implementation
1698 procedures herein apply to regulated activities that have the poten-
1699 tial to affect water quality. The level of review required will depend
1700 upon the existing uses of the water segment that would be affected,
1701 the level of protection (“tier”) assigned to the applicable water seg-
1702 ment, the nature of the activity, and the extent to which existing
1703 water quality would be degraded.

1704 **4A.2.** Nonpoint source activities will be deemed to be in
1705 compliance with antidegradation requirements with the installation
1706 and maintenance of cost-effective and reasonable best management
1707 practices in accordance with 46 CSR 1-4.1.b. herein. These include,
1708 but are not limited to, best management practice programs for
1709 silviculture administered by the Division of Forestry, programs for
1710 oil and gas operations administered by the Office of Oil and Gas of
1711 the Division of Environmental Protection, nonpoint source construc-
1712 tion activities, and reasonable land, soil and water conservation
1713 measures and practices applied to agricultural nonpoint sources.

1714 **4A.3.** Where applicable and practical, the antidegradation
1715 procedure and review shall be integrated into and proceed concur-
1716 rently with existing environmental processes and reviews pursuant
1717 to the National Environmental Policy Act.

1718 **4A.4.** Information contained within existing environmental
1719 processes and reviews, such as environmental assessments, environ-
1720 mental impact statements, facilities plans, and findings of no signifi-
1721 cant impact, may be used to provide part or all of the requirements
1722 of the antidegradation procedure and review.

1723 **46-1-4B. Definitions.**

1724 **4B.1.** For purposes of this Subpart (Appendix F) the term
1725 “agency” or “agencies” refers to the Division of Environmental

1726 Protection or other federal, state, or local governmental entities with
1727 regulatory authority over activities that may affect water quality.

1728 **4B.2.** For purposes of this Subpart (Appendix F) the term
1729 “regulated entity” refers generally to any regulated entity that af-
1730 fects or is proposing an activity that will affect water quality. For
1731 example, an applicant for a WV/NPDES permit, a WV/NPDES
1732 permit holder, or an owner or operator of an activity that discharges
1733 pollutants into a water of the state would be a regulated entity.

1734 **4B.3.** For purposes of this Subpart (Appendix F) the term
1735 “minimum uses” refers to recreation and wildlife and the propaga-
1736 tion and maintenance of fish and other aquatic life.

1737 **46-1-4C. Antidegradation Review Process.**

1738 **4C.1.** As set forth in 46 CSR 1-4.1, the State’s
1739 antidegradation policy requires that existing uses and the level of
1740 water quality necessary to protect the existing uses shall be main-
1741 tained and protected. This requirement applies to all waters of the
1742 state.

1743 **4C.2.** Except where a water segment is specifically listed
1744 as a Tier 2.5 or Tier 3 water, the following section outlines how the
1745 agency conducting the antidegradation review will determine the
1746 level of protection (“tier”) assigned to the receiving water body
1747 associated with the activity subject to this rule.

1748 **4C.3.** Uses. The Director, in conducting an
1749 antidegradation review, must determine the existing uses of the
1750 receiving water body associated with the proposed activity. The
1751 Director shall determine the existing uses of the water body by iden-
1752 tifying the uses set forth in 46 CSR 1 Section 6 that the water body
1753 currently supports, or has supported since November 28, 1975. The
1754 regulated entity may be required to provide data sufficient for the
1755 permitting agency to determine the existing uses of the water seg-
1756 ment.

1757 **4C.4.** Baseline water quality. Where baseline water qual-
1758 ity has not been established for the water segment the regulated
1759 entity proposes to impact or has not been established for a parame-
1760 ter of concern that is reasonably expected to be discharged into the

1761 water segment as a result of the proposed regulated activity, the
1762 Director must determine the baseline water quality for the receiving
1763 water body. The Director may consider data for establishing the
1764 baseline water quality from a federal or state agency, the regulated
1765 entity, the public, or any other source, as long as the data are recent
1766 and reliable. If adequate data are not available, the agency may, in
1767 conjunction with the regulated entity or on its own initiative, estab-
1768 lish a plan for obtaining the necessary data. The regulated entity
1769 may be required to provide baseline water quality for those paramet-
1770 ers of concern that are reasonably expected to be discharged as a
1771 result of the regulated activity into the affected water segment to
1772 help the permitting agency determine the baseline water quality, the
1773 existing uses, and the applicable tier. The regulated entity may
1774 contact the Director prior to initiating a baseline water quality eval-
1775 uation to seek concurrence with its determination of the parameters
1776 of concern for its proposed activity and its proposed sampling pro-
1777 tocol.

1778 **4C.5.** Determination of tier. If the tier has not already
1779 been determined for the water segment the regulated entity proposes
1780 to impact, then after determining the baseline water quality for pa-
1781 rameters of concern and the existing uses for a water body, the
1782 agency will determine which level of protection (i.e. “tier”) applies
1783 to the receiving water body associated with the activity.

1784 **4C.5.a.** Water segments listed in Appendix F-2 of this rule
1785 shall receive Tier 2.5 protection.

1786 **4C.5.b.** Water segments within a federally designated
1787 Wilderness Area, as well as other water segments specifically listed
1788 in this rule as an outstanding national resource water shall receive
1789 Tier 3 protection.

1790 **4C.5.c.** Water segments not within a federally designated
1791 Wilderness Area and not listed in Appendix F-2 of this rule shall
1792 receive Tier 1 protection, and shall receive Tier 2 protection if the
1793 water segment is determined, pursuant to 4E.1.a. through 4E.1.c. of
1794 this rule, to be a high quality water for purposes of antidegradation
1795 review.

1796 **4C.5.d.** Water segments may be determined to receive only
1797 Tier 1 protection, pursuant to 4D.2. through 4D.6. of this rule, for
1798 purposes of antidegradation review.

1799 **4C.5.e.** To the extent practicable, a list of water segments
1800 protected under Tier 2.5 or Tier 3 will be maintained on the West
1801 Virginia Division of Environmental Protection's website.

1802 **4C.6.** Level of review. Once the correct level of protec-
1803 tion ("tier") and water segment use(s) are identified for the receiv-
1804 ing water body, the agency shall document its findings and proceed
1805 with the appropriate level of antidegradation review.

1806 **4C.7.** On or after the effective date of these implementa-
1807 tion procedures, new and reissued WV/NPDES general permits will
1808 be evaluated to consider the potential for significant degradation as
1809 a result of the permitted activity. Regulated activities that are
1810 granted coverage by a WV/NPDES general permit will not be re-
1811 quired to undergo a Tier 2 antidegradation review as part of the
1812 permit registration process. Regulated activities that are granted
1813 coverage by a WV/NPDES permit that will degrade a Tier 2.5 or
1814 Tier 3 water segment must comply with the requirements of 4F and
1815 4G herein.

1816 **4C.8.** Regulated activities that qualify for coverage under
1817 a Corps of Engineers regional or nationwide permit pursuant to
1818 section 404 of the Federal Act that has been certified by the state
1819 pursuant to section 401 of the Federal Act will not be required to
1820 undergo a Tier 2 antidegradation review, provided, however, that
1821 where an individual 401 certification is required, the Director may
1822 require an appropriate antidegradation review. Where an activity
1823 covered by a regional or nationwide permit pursuant to section 404
1824 of the Federal Act and certified pursuant to section 401 of the Fed-
1825 eral Act allows for filling of a water, this exemption only applies to
1826 the site of the fill, and does not apply to activities downstream of the
1827 site of the fill. Regulated activities that are granted section 401
1828 certification that will degrade a Tier 2.5 or Tier 3 water segment
1829 must comply with the requirements of 4F and 4G herein.

1830 **4C.9.** The Director shall develop guidance which ad-
1831 dresses these implementation procedures and provides additional
1832 information to persons conducting regulated activities that are af-

1833 fected by these procedures. Such guidance shall include, but shall
1834 not be limited to, information regarding the following: (a) the de-
1835 termination of baseline water quality; (b) social and economic im-
1836 portance pursuant to section 4E.4; and (c) the reasonable alterna-
1837 tives analysis required by section 4E.3. The Director shall provide
1838 an opportunity for public review and comment before finalizing any
1839 guidance. Within twelve months of the effective date of this rule,
1840 the Director shall report to the advisory committee established pur-
1841 suant to W.Va. Code §22-1-9 regarding the status of its implementa-
1842 tion.

1843 **46-1-4D. Tier 1 Protection.**

1844 **4D.1.** Existing uses and the level of water quality necessary
1845 to protect the existing uses shall be maintained and protected.

1846 **4D.2.** Tier 1 protection applies to all waters of the state. A
1847 water segment shall be afforded Tier 1 protection where the level of
1848 water quality is not sufficient to support recreation and wildlife and
1849 the propagation and maintenance of fish and other aquatic life, or
1850 where the water quality meets but does not exceed levels necessary
1851 to support recreation and wildlife and the propagation and mainte-
1852 nance of fish and other aquatic life.

1853 **4D.3.** In determining whether a water segment is afforded
1854 only Tier 1 protection, the agency will focus on whether the water
1855 segment is meeting or failing to meet minimum uses, except that,
1856 notwithstanding any other provision of this rule, the main stems of
1857 the Monongahela River, and the Kanawha River from milepoint 72
1858 to the confluence with the Ohio River shall be afforded Tier 1 pro-
1859 tection only.

1860 **4D.4.** The Director will consider whether a water segment
1861 is listed on the state's 303(d) impaired waters list, but where the
1862 parameter(s) for which the water segment is listed does not result in
1863 that water segment's failure to attain minimum uses and where all
1864 other parameters exceed the quality necessary to support recreation
1865 and wildlife and the propagation and maintenance of fish and other
1866 aquatic life, the water segment will be afforded Tier 2 protection.
1867 Where the parameter(s) for which the water segment is listed does
1868 result in failure to attain minimum uses, such as an acid mine

1869 drainage-impacted water segment, that water segment will be af-
1870 forded only Tier 1 protection.

1871 **4D.5.** All water segments listed on the state's 303(d) im-
1872 paired waters list will be afforded only Tier 1 protection for the
1873 parameter(s) that resulted in the water segment being listed.

1874 **4D.6.** There also may be waters in the state where one or
1875 both of the fishable/swimmable uses are attained, but existing water
1876 quality is not "better than necessary" to support those uses (i.e.,
1877 assimilative capacity does not exist for any of the parameters that
1878 would be affected by the proposed activity). Tier 1 protection is
1879 appropriate for such a water segment.

1880 **4D.7.** Where existing uses of the water body are impaired,
1881 there shall be no lowering of the water quality with respect to the
1882 parameters of concern that are causing the impairment. The agency
1883 shall consider nomination of such water body for the 303(d) list of
1884 water quality-impaired streams.

1885 **4D.8.** Where a proposed activity will result in a new or
1886 expanded discharge that would otherwise prevent attainment of an
1887 existing use in a water subject to Tier 1 protection, the applicant
1888 may be allowed to satisfy antidegradation review requirements by
1889 implementing or financing upstream controls of point or nonpoint
1890 sources sufficient to offset the water quality effects of the proposed
1891 activity from the same parameters and insure an improvement in
1892 water quality as a result of the trade. The basis of the trade will be
1893 documented and will be consistent with the trading assessment pro-
1894 cedure that has been approved by the Director. A trade may be
1895 made between more than one stream segment where removing a
1896 discharge in one stream segment directly results in improved water
1897 quality in another stream segment. In addition, (1) the effluent trade
1898 must be for the same parameter; (2) where uncertainty exists regard-
1899 ing the effluent trade, an adequate margin of safety will be required;
1900 (3) dischargers cannot claim offsets for water quality improvements
1901 that are required or will occur irrespective of the proposed new or
1902 expanded discharge; and (4) the trade must be enforceable.

1903 **46-1-4E. Tier 2 Protection (High Quality Waters).**

1904 4E.1. Tier 2 protection.

1905 **4E.1.a.** A water segment shall be considered a Tier 2 high
1906 quality water where the level of water quality exceeds levels neces-
1907 sary to support recreation and wildlife and the propagation and
1908 maintenance of fish and other aquatic life.

1909 **4E.1.b.** Tier 2 waters need not exceed the level of quality
1910 needed to meet or exceed numeric criteria for every parameter.
1911 Water segments that support the minimum fishable/swimmable uses
1912 and have assimilative capacity remaining for some parameters shall
1913 generally be afforded Tier 2 protection. For example, a water seg-
1914 ment listed on the state's 303(d) impaired waters list can qualify for
1915 Tier 2 protection, but where the impairment that caused the water
1916 segment to be listed results in failure to attain minimum uses, that
1917 water segment will be afforded only Tier 1 protection.

1918 **4E.1.c.** Where a water segment does not meet or exceed
1919 applicable water quality criteria for every parameter, the Director
1920 will determine whether the water segment will be afforded Tier 2
1921 protection as part of the antidegradation review process using best
1922 professional judgment. In addition to data available for review, the
1923 Director may consider factors such as (1) existing aquatic life uses,
1924 (2) existing recreational or aesthetic uses, (3) existing water quality
1925 data for upstream segments or comparable segments, (4) biological
1926 score for the water segment, and (5) the overall value of the seg-
1927 ment from an ecological, health and public use perspective.

1928 **4E.1.d.** Where insufficient information is available to
1929 determine which tier should apply, a regulated entity may seek a
1930 determination that a water segment should be afforded only Tier 1
1931 protection by submitting water quality data consistent with guidance
1932 developed pursuant to subdivision 4C.9. of this rule showing that
1933 there is no remaining assimilative capacity for any parameter to be
1934 affected by its activity. In seeking such a determination, the impacts
1935 of all of the regulated entity's activities on the water segment must
1936 be considered.

1937 **4E.1.e.** Where there is insufficient information to establish
1938 which tier should apply, it is the intent of these procedures to apply
1939 Tier 2 protection to such waters until such time as sufficient water
1940 quality data is obtained to determine the appropriate level of protec-

1941 tion. No presumption shall be made with regard to the actual qual-
1942 ity of any waters as a result of such initial application.

1943 **4E.2. Tier 2 antidegradation review.**

1944 **4E.2.a.** Any regulated activity in a Tier 2 water segment is
1945 required to go through the Tier 2 antidegradation review process
1946 where:

1947 **4E.2.a.1.** The regulated activity is a new or expanded ac-
1948 tivity that would significantly degrade water quality; or

1949 **4E.2.a.2.** the Director determines, upon renewal of a per-
1950 mit or certification, that other individual circumstances warrant a
1951 full review such as cumulative degradation resulting from multiple
1952 discharges within a watershed, degradation resulting from a single
1953 discharge over time, or degradation caused by a regulated facility's
1954 historic noncompliance with its permit.

1955 **4E.2.b.** In allowing any degradation, the agency shall
1956 assure water quality adequate to protect existing uses fully (i.e., Tier
1957 1 protection).

1958 **4E.2.c.** The Director may determine that certain types or
1959 classes of activities should be exempt from Tier 2 review after bal-
1960 ancing the relative impact of the activities on water quality against
1961 the overall benefit of the activities to public health and welfare or
1962 the environment. The Director's discretion to exempt activities
1963 from review pursuant to this section shall be exercised and con-
1964 strued narrowly. Such types or classes of activities may include, for
1965 example, expansions or improvements to publicly owned
1966 wastewater treatment facilities or activities, public benefit activities
1967 by governmental entities, or discharges related to environmental
1968 remediation activities. Where the agency tentatively determines to
1969 grant an exemption under this provision, notice of this determina-
1970 tion must be included in any required public notice, such as public
1971 notice required prior to issuance of an NPDES permit. The Direc-
1972 tor's final determination is a final decision and subject to appeal to
1973 the Environmental Quality Board.

1974 **4E.2.c.1.** A proposed new or expanded discharge from a
1975 publicly owned or publicly owned and privately operated sanitary
1976 wastewater treatment plant constructed or operated to alleviate a

1977 public health concern associated with failing septic systems or un-
1978 treated or inadequately treated sewage, is exempt from Tier 2 re-
1979 view. This exemption would include combined sewer overflow
1980 elimination or reduction projects affecting one or more water bodies
1981 and applies only where there will be a net decrease in the overall
1982 pollutant loading discharged to the combined receiving waters.

1983 **4E.2.d.** Degradation for Tier 2 shall be deemed significant
1984 if the activity results in a reduction in the water segment's available
1985 assimilative capacity (the difference between the baseline water
1986 quality and the water quality criteria) of ten percent or more at the
1987 appropriate critical flow condition(s) for parameters of concern.
1988 Critical flow conditions for non-precipitation induced discharges are
1989 the 7Q10 flow of the receiving stream, plus either of the following:
1990 maximum permitted flow or maximum flow specified in the appli-
1991 cation, for industrial activities, or the average design flow, for
1992 wastewater treatment activities. Degradation will also be deemed
1993 significant if the proposed activity, together with all other activities
1994 allowed after the baseline water quality is established, results in a
1995 reduction in the water segment's available assimilative capacity of
1996 20% or more at the appropriate critical flow conditions for the pa-
1997 rameters of concern.

1998 **4E.2.e.** Significant degradation will be determined on a
1999 parameter-by-parameter basis for each parameter of concern that
2000 might be affected by the regulated activity.

2001 **4E.2.f.** A proposed activity that will result in a new or
2002 expanded discharge in a water subject to Tier 2 protection may be
2003 allowed where the applicant agrees to implement or finance up-
2004 stream controls of point or nonpoint sources sufficient to offset the
2005 water quality effects of the proposed activity from the same parame-
2006 ters and insure an improvement in water quality as a result of the
2007 trade. The basis of the trade will be documented and will be consis-
2008 tent with the trading assessment procedure that has been approved
2009 by the Director. A trade may be made between more than one
2010 stream segment where removing a discharge in one stream segment
2011 directly results in improved water quality in another stream seg-
2012 ment. In addition, (1) the effluent trade must be for the same pa-
2013 rameter; (2) where uncertainty exists regarding the effluent trade, an
2014 adequate margin of safety will be required; (3) dischargers cannot

2015 claim offsets for water quality improvements that are required or
2016 will occur irrespective of the proposed new or expanded discharge;
2017 and (4) the trades must be enforceable.

2018 **4E.2.g.** New or expanded activities determined to be sig-
2019 nificant by the agency shall be subject to the Tier 2 review require-
2020 ments described in sections 4E.2. through 4E.5. herein. If the
2021 agency determines that no further Tier 2 review requirements shall
2022 apply for an activity, the activity must still achieve the highest es-
2023 tablished statutory and regulatory requirements applicable to them,
2024 or conditions of the permit, or water quality certification, and that
2025 determination must be made a part of the public notification, as
2026 provided in 4H.3.

2027 **4E.3. Review of alternatives.**

2028 **4E.3.a.** If a determination is made that significant degrada-
2029 tion will occur, the agency shall determine whether reasonable and
2030 cost effective less-degrading or non-degrading alternatives to the
2031 proposed activity exist. The agency will evaluate any alternatives
2032 analysis submitted by the regulated activity for consistency with the
2033 requirements set forth in Subsection 4E.3.b. herein.

2034 **4E.3.b.** A regulated entity proposing any new or expanded
2035 regulated activity that would significantly degrade water quality in a
2036 high quality water is required to prepare an evaluation of alterna-
2037 tives to the proposed activity. The evaluation must provide substan-
2038 tive information pertaining to the cost and environmental impacts
2039 associated with the following alternatives:

2040 **4E.3.b.1.** Pollution prevention measures;

2041 **4E.3.b.2.** Reduction in scale of project;

2042 **4E.3.b.3.** Water recycle or reuse;

2043 **4E.3.b.4.** Process changes;

2044 **4E.3.b.5.** Innovative treatment technology or technologies;

2045 **4E.3.b.6.** Advanced treatment technology or technologies;

2046 **4E.3.b.7.** Seasonal or controlled discharge options to avoid
2047 critical water quality periods;

2048 **4E.3.b.8.** Improved operation and maintenance of existing
2049 treatment systems; and

2050 **4E.3.b.9.** Alternative discharge locations.

2051 **4E.3.c.** After alternatives to allowing degradation have
2052 been adequately evaluated, a determination shall be made regarding
2053 whether cost-effective and reasonable non-degrading or less-degrad-
2054 ing alternatives to the proposed activity shall be required. This
2055 determination will be based primarily on the alternatives analysis
2056 developed by the regulated entity, but may be supplemented with
2057 other information and data. As a rule of thumb, cost effective and
2058 reasonable non-degrading or less-degrading pollution control alter-
2059 natives with costs that are less than 110% of the costs of the pollu-
2060 tion control measures associated with the proposed activity shall be
2061 considered reasonable.

2062 **4E.3.d.** If it is determined that reasonable and cost effec-
2063 tive less degrading or non-degrading alternatives to the proposed
2064 activity do exist, the project design may be revised accordingly. In
2065 general, if reasonable alternative(s) exist, the alternative or combi-
2066 nation of alternatives that provide the least amount of degradation
2067 shall be implemented up to the determined reasonable and cost-
2068 effective threshold. If the regulated entity does not agree to adopt
2069 such reasonable and cost-effective alternatives, the alternatives anal-
2070 ysis findings will be documented and the activity will not be al-
2071 lowed.

2072 **4E.4. Review of social and economic importance.**

2073 **4E.4.a.** If significant degradation would occur, even after
2074 application of reasonable less-degrading or non-degrading alterna-
2075 tives, a determination shall be made as to whether the proposed
2076 activity is necessary to accommodate important economic or social
2077 development in the area in which the waters are located.

2078 **4E.4.b.** The regulated activity must document the social
2079 and economic importance of the proposed activity.

2080 **4E.4.c.** The factors to be addressed in such documentation
2081 may include, but are not limited to, the following:

2082 **4E.4.c.1.** Employment (e.g., increasing, maintaining or
2083 avoiding a reduction in employment);

2084 **4E.4.c.2.** Increased production;

2085 **4E.4.c.3.** Improved community tax base;

2086 **4E.4.c.4.** Housing;

2087 **4E.4.c.5.** Ancillary community economic benefit; and

2088 **4E.4.c.6.** Correction of an environmental or public health
2089 problem.

2090 **4E.4.d.** In addition to the above, a regulated entity may be
2091 required to submit the following:

2092 **4E.4.d.1.** Information pertaining to current aquatic life,
2093 recreational, or other water uses;

2094 **4E.4.d.2.** Information necessary to determine the environ-
2095 mental impacts that may result from the proposed activity;

2096 **4E.4.d.3.** Facts pertaining to the current state of economic
2097 development in the area (e.g., population, area employment, area
2098 income, major employers, types of businesses);

2099 **4E.4.d.4.** Government fiscal base; and

2100 **4E.4.d.5.** Land use in the areas surrounding the proposed
2101 activity.

2102 **4E.4.e.** Once the available information pertaining to the
2103 socio-economic importance of the proposed activity has been re-
2104 viewed by the agency, a preliminary determination regarding impor-
2105 tance shall be made. In evaluating the regulated activity's demon-
2106 stration of socio-economic importance, the agency may use EPA's
2107 Interim Economic Guidance for Water Quality Standards Workbook
2108 (EPA 823-B-95-002, March, 1995). Where there is a request for a
2109 variance from groundwater standards pursuant to 47 CSR 57 for

2110 existing sites where activities on those sites have the potential to
2111 impact surface water from contaminated groundwater and the activ-
2112 ity is otherwise subject to this rule, the socio-economic justification
2113 process required under 47 CSR 57 subdivision 6.2.i will satisfy the
2114 requirements of this section. If the proposed activity is determined
2115 to have social or economic importance in the area in which the af-
2116 fected waters are located, the substance and basis for that prelimi-
2117 nary determination shall be documented and the Tier 2 review shall
2118 continue.

2119 **4E.5. Intergovernmental coordination for Tier 2 reviews.**

2120 **4E.5.a.** The intergovernmental coordination requirements
2121 in 46 CSR 1 Section 4.1.b. will be accomplished by providing notice
2122 to those agencies listed in Appendix F-1 that the Director be-
2123 lieves may have regulatory oversight of the regulated activity of the
2124 preliminary determination of the socio-economic review and re-
2125 questing comments from those agencies regarding that review.

2126 **4E.5.b.** The public notice of the proposed activity will be
2127 provided as set forth in section 4H.3. herein.

2128 **4E.5.c.** Once the intergovernmental coordination and pub-
2129 lic notice requirements are satisfied, the Director shall make a final
2130 determination concerning the social or economic importance of the
2131 proposed activity. All social and economic importance determina-
2132 tions, including determinations to prohibit the activity, shall be doc-
2133 umented and made a part of the public record.

2134 **46-1-4F. Tier 2.5 Protection Review Procedures (Wa-**
2135 **ters of Special Concern).**

2136 See section 46-1-4.1.c and 46-1-2.29 for a description of
2137 waters of special concern.

2138 **4F.1. Tier 2.5 waters.**

2139 **4F.1.a.** Any proposed activity that would degrade a water
2140 segment listed in Appendix F-2 of this rule as waters of special
2141 concern will go through the Tier 2.5 antidegradation review process.
2142 Discharges from publicly-owned or publicly-owned and privately
2143 operated sanitary wastewater treatment plants that expand to allevi-

2144 ate a public health concern associated with failing septic systems or
2145 untreated or inadequately treated sewage, shall be permissible in a
2146 Tier 2.5 water segment where there will be a net decrease in the
2147 overall pollutant loading discharged to the combined receiving wa-
2148 ters: *Provided*, That less degrading alternative treatment technolo-
2149 gies are considered and used where costs for such technologies are
2150 within budgets and rates approved for such expansion project. This
2151 provision may extend to combined sewer overflow elimination or
2152 reduction projects. Except as provided in 4F.1.b. of this rule, the
2153 listing procedure for Tier 2.5 waters is set forth in section 4H.1.
2154 herein. Currently listed Tier 2.5 waters are included in Appendix F-
2155 2 to this rule.

2156 **4F.1.b. Initial Presumptive Listing for Tier 2.5.**

2157 **4F.1.b.1.** The stream or stream segments that appear on
2158 Appendix F-3 shall be presumed to qualify as Tier 2.5 waters. Be-
2159 fore any such stream or stream segment is protected as Tier 2.5
2160 waters (and listed on Appendix F-2) the Director shall do the fol-
2161 lowing:

2162 (a) Assure compliance with all provisions of article one-a
2163 of chapter twenty-two; and

2164 (b) No sooner than six months and no later than twelve
2165 months from the effective date of this rule, provide, where practica-
2166 ble, individual notice to property owners along such stream or
2167 stream segment. In addition, notice by publication shall be provided
2168 to all property owners and others with a legal interest in the prop-
2169 erty. The notice shall include at a minimum, the information set
2170 forth in paragraphs 4H.1.a.1.a. through 4H.1.a.1.d. of this rule. The
2171 notice shall indicate that a property owner or holder of legal interest
2172 in the property shall have thirty days to file an objection to the in-
2173 clusion of the stream or stream segment as a Tier 2.5 water.

2174 **4F.1.b.2.** Should an objection be received from an owner
2175 or holder of a legal interest in property adjoining any stream on
2176 Appendix F-3, the Director shall provide written justification for the
2177 inclusion of the stream as a Tier 2.5 stream with reference to the
2178 criteria set out in 4H.1.a.2. of this rule. The Director shall then
2179 provide a thirty-day comment period on the proposed action.

2180 **4F.1.b.3.** Where no objection is made to the inclusion of a
2181 stream or stream segment as a Tier 2.5 water, the stream shall be
2182 included by the Director on Appendix F-2 without further justifica-
2183 tion.

2184 **4F.1.b.4.** Any final decision by the Director with regard to
2185 the inclusion of a stream in Tier 2.5 made following the procedure
2186 set forth in this paragraph, may be appealed to the EQB.

2187 **4F.1.c.** Following the initial listing for Tier 2.5 waters, as
2188 described in paragraph 4F.1.b. above, subsequent additions or dele-
2189 tions from Appendix F-2 shall be in accordance with section 4H.1.,
2190 herein.

2191 **4F.2. Tier 2.5 antidegradation review.**

2192 **4F.2.a.** No significant degradation of Tier 2.5 waters will
2193 be allowed. For Tier 2.5 waters, degradation will be deemed signif-
2194 icant if it exceeds the baseline water quality plus ten percent of
2195 available assimilative capacity (the difference between the baseline
2196 water quality and the water quality criteria), whether from a single
2197 activity or cumulatively, except that discharges affecting dissolved
2198 oxygen, pH, fecal coliform or temperature will be deemed insignifi-
2199 cant provided that:

2200 **4F.2.a.1.** For dissolved oxygen, the maximum DO sag will
2201 not be greater than 0.4 ppm based on an appropriate wasteload allo-
2202 cation model, unless that reduction is projected to cause a violation
2203 of sections 8.12 through 8.12.3 in Appendix E, Table 1 herein;

2204 **4F.2.a.2.** pH is maintained within the 6.0 to 9.0 range;

2205 **4F.2.a.3.** Thermal discharges will be consistent with
2206 316(a) of the Federal Act or will not increase the temperature more
2207 than two degrees Fahrenheit at any time or cause other violations of
2208 applicable criteria in sections 8.28 through 8.28.4 in Appendix E,
2209 Table 1, herein.

2210 **4F.2.a.4.** For fecal coliform, necessary and appropriate
2211 treatment (disinfection) or control is required and the fecal coliform

2212 concentrations are established as 200/100 ml monthly average and
2213 400/100 ml daily maximum.

2214 **4F.2.b.** Where a Tier 2.5 water has one or more parame-
2215 ters that fail to meet water quality criteria, the Director shall use best
2216 professional judgment in setting appropriate limitations for such
2217 parameters, with the goal of improving baseline water quality for
2218 such parameters over time.

2219 **4F.2.c.** Where baseline water quality has not been estab-
2220 lished for the Tier 2.5 water segment for a parameter of concern that
2221 is reasonably expected to be discharged into the water segment as a
2222 result of a new or expanded regulated activity, a determination of
2223 the baseline water quality for the receiving water segment must be
2224 established for that parameter of concern prior to allowing any new
2225 or expanded discharge.

2226 **4F.2.d.** The Director may consider data for establishing
2227 the baseline water quality from a federal or state agency, the regu-
2228 lated entity, the public, or any other source, as long as the data are
2229 recent and reliable. The regulated entity may be required to provide
2230 baseline water quality for those parameters of concern that are rea-
2231 sonably expected to be discharged as a result of the regulated activ-
2232 ity into the affected water segment.

2233 **4F.2.e.** After the baseline water quality has been estab-
2234 lished for the parameters of concern reasonably expected to be dis-
2235 charged by the proposed activity, the *de facto* criteria for those pa-
2236 rameters of concern will equal the established baseline water quality
2237 plus ten percent of available assimilative capacity.

2238 **4F.2.f.** Regulated entities with discharges existing on or
2239 before the effective date of this rule that discharge into a Tier 2.5
2240 water may be required to submit an alternatives analysis upon re-
2241 newal of its application or upon the written request of the Director
2242 to evaluate reasonable and cost-effective alternatives that would
2243 reduce the activity's impact to a Tier 2.5 water.

2244 **4F.2.g.** Discharges from activities in waters upstream of a

2245 water of special concern shall not result in the ambient water quality
2246 within the Tier 2.5 water exceeding the *de facto* criteria.

2247 **4F.2.h.** A proposed activity that will result in a new or
2248 expanded discharge in a water subject to Tier 2.5 protection may be
2249 allowed where the applicant agrees to implement or finance up-
2250 stream controls of point or nonpoint sources sufficient to offset the
2251 water quality effects of the proposed activity from the same parame-
2252 ters and insure an improvement in water quality as a result of the
2253 trade. The basis of the trade will be documented and will be consis-
2254 tent with the trading assessment procedure that has been approved
2255 by the Director. A trade may be made between more than one
2256 stream segment where removing a discharge in one stream segment
2257 directly results in improved water quality in another stream seg-
2258 ment. In addition, (1) the effluent trade must be for the same pa-
2259 rameter; (2) where uncertainty exists regarding the effluent trade, an
2260 adequate margin of safety will be required; (3) dischargers cannot
2261 claim offsets for water quality improvements that are required or
2262 will occur irrespective of the proposed new or expanded discharge;
2263 and (4) the trades must be enforceable.

2264 **4F.2.i.** If a determination is made that the activity will
2265 result in significant degradation of a Tier 2.5 water, the activity shall
2266 not be allowed.

2267 **4F.2.j.** If the activity is determined not to result in signifi-
2268 cant degradation of a Tier 2.5 water, the activity may be allowed. In
2269 such case the antidegradation review findings will be documented in
2270 writing and public notice activities will be initiated consistent with
2271 section 4H.3. herein.

2272 **4F.2.k.** Short-term water quality impacts. The Director
2273 shall determine whether a proposed activity is short term in nature
2274 and the resulting changes in water quality will be temporary and
2275 have limited effects. Notwithstanding sections 4F.2.a. and 4F.2.e.
2276 herein, short-term activities which result in less than a 10% change
2277 in the available assimilative capacity may be deemed to have lim-
2278 ited effects. Determinations will be made on a case-by-case basis
2279 and shall be made after consideration of the following factors:

2280 **4F.2.k.1.** The length of time during which the water qual-
2281 ity will be lowered;

- 2282 **4F.2.k.2.** The percent change in ambient concentrations;
- 2283 **4F.2.k.3.** The parameters affected;
- 2284 **4F.2.k.4.** The likelihood for long-term water quality bene-
2285 fits to the segment (e.g., as may result from dredging of contami-
2286 nated sediments);
- 2287 **4F.2.k.5.** The degree to which achieving applicable water
2288 quality standards during the proposed activity may be at risk;
- 2289 **4F.2.k.6.** The potential for any residual long-term influ-
2290 ences on existing uses; and
- 2291 **4F.2.k.7.** The cumulative impacts from all sources for the
2292 parameters affected.
- 2293 **46-1-4G. Tier 3 Protection Review Procedures (Outstanding**
2294 **National Resource Waters).** See subdivisions 46-1-
2295 4.1.d and 46-1-2.15 for a description of Outstanding
2296 National Resource Waters (ONRW).
- 2297 **4G.1. Tier 3 waters.** ONRWs are to be maintained, pro-
2298 tected and improved where necessary. Any proposed new or ex-
2299 panded regulated activity that would degrade (result in a lowering of
2300 water quality) a water body that has been approved as an ONRW,
2301 other than temporary lowering of water quality, is prohibited.
- 2302 **4G.2. Tier 3 antidegradation review.** The agency shall
2303 use the following antidegradation implementation procedures for
2304 evaluating new or expanded regulated activities that have the poten-
2305 tial to affect Outstanding National Resource Waters (ONRWs), as
2306 described in subdivision 46-1-4.1.c. and as nominated and approved
2307 in accordance with the provisions of Appendix F.
- 2308 **4G.2.a.** Determine whether the proposed activity is short
2309 term in nature and the resulting changes in water quality will be
2310 temporary. Such determination will be made on a case-by-case
2311 basis and shall be made after consideration of the following factors:

2312 **4G.2.a.1.** The length of time during which the water qual-
2313 ity will be lowered;

2314 **4G.2.a.2.** The percent change in ambient concentrations;

2315 **4G.2.a.3.** The parameters affected;

2316 **4G.2.a.4.** The likelihood for long-term water quality bene-
2317 fits to the segment (e.g., as may result from dredging of contami-
2318 nated sediments);

2319 **4G.2.a.5.** The degree to which achieving applicable water
2320 quality standards during the proposed activity may be at risk; and

2321 **4G.2.a.6.** The potential for any residual long-term influ-
2322 ences on existing uses.

2323 **4G.2.b.** If after review of the factors in 4G.2.a.1-6, the
2324 agency determines that the proposed activity will be short term in
2325 nature and the changes in water quality will be temporary and lim-
2326 ited, the proposed activity may be authorized. In such case the
2327 antidegradation review findings shall be documented and public
2328 notice activities shall be initiated. If after review of the factors in
2329 4G.2.a.1 through 4G.2.a.6, the agency determines that the proposed
2330 activity will not be short term in nature or that changes in water
2331 quality will not be temporary and limited, the proposed activity
2332 shall be denied.

2333 **4G.3. Sources upstream from an ONRW.** Any pro-
2334 posed activity that would result in a permanent new or expanded
2335 discharge upstream of an ONRW segment is prohibited except
2336 where such source would improve or not degrade the existing water
2337 quality of the downstream ONRW segment.

2338 **4G.3.a.** To determine whether the proposed activity will
2339 result in the lowering of water quality in the downstream ONRW
2340 segment, the following factors, when applicable, shall be consid-
2341 ered:

2342 **4G.3.a.1.** Change in ambient concentrations predicted at
2343 the appropriate critical condition(s);

2344 **4G.3.a.2.** Change in loadings (i.e., the new or expanded
2345 loadings compared to total existing loadings to the segment);

2346 **4G.3.a.3.** Reduction in available assimilative capacity;

2347 **4G.3.a.4.** Nature, persistence and potential effects of the
2348 parameter;

2349 **4G.3.a.5.** Potential for cumulative effects;

2350 **4G.3.a.6.** Degree of confidence in the various components
2351 of any modeling technique utilized (e.g., degree of confidence asso-
2352 ciated with the predicted effluent variability); and

2353 **4G.3.a.7.** Other factors determined by the Director, when
2354 appropriate.

2355 **4G.3.b.** If a preliminary determination is made that the
2356 applicable criteria in 4G.3.a.1. through 4G.3.a.7. will be met, the
2357 antidegradation review findings shall be documented and the appli-
2358 cable public notice activities shall be initiated. If after review of the
2359 factors in 4G.3.a.1. through 4G.3.a.7., the Director determines that
2360 the proposed activity will result in the lowering of water quality in
2361 the downstream ONRW stream segment, the proposed activity shall
2362 be denied.

2363 **4G.4.** For ONRWs in areas designated as federal Wilder-
2364 ness, nothing in this rule is intended to authorize activities not au-
2365 thorized by the Wilderness Act.

2366 **4G.5.** A proposed activity that will result in a new or ex-
2367 panded discharge in a water subject to Tier 3 protection may be
2368 allowed where the applicant agrees to implement or finance up-
2369 stream controls of point or nonpoint sources sufficient to offset the
2370 water quality effects of the proposed activity from the same parame-
2371 ters and insure an improvement in water quality as a result of the
2372 trade. The basis of the trade will be documented and will be consis-
2373 tent with the trading assessment procedure that has been approved
2374 by the Director. A trade may be made between more than one
2375 stream segment where removing a discharge in one stream segment
2376 directly results in improved water quality in another stream seg-
2377 ment. In addition, (1) the effluent trade must be for the same pa-
2378 rameter; (2) where uncertainty exists regarding the effluent trade, an

2379 adequate margin of safety will be required; (3) dischargers cannot
2380 claim offsets for water quality improvements that are required or
2381 will occur irrespective of the proposed new or expanded discharge;
2382 and (4) the trade must be enforceable.

2383 **46-1-4H. Designation of Tier 2.5 and Tier 3 waters; public par-**
2384 **ticipation in antidegradation reviews; appeals.**

2385 **4H.1. Listing process for Tier 2.5 waters.**

2386 **4H.1.a. Tier 2.5 Nomination Procedures.** Any interested
2387 party or the Board may nominate a water to be listed as a Water of
2388 Special Concern. After reviewing the nomination the Board shall
2389 consider the qualification criteria and may designate the nominated
2390 water as a Tier 2.5 water in accordance with the notice and com-
2391 ment provisions of 46 CSR 6, Procedural Rules Governing Site
2392 Specific Revisions to Water Quality Standards. The address for
2393 filing such petitions is West Virginia Environmental Quality Board,
2394 1615 Washington Street, East, Room 301, Charleston, West Vir-
2395 ginia 25311-2126. The nominating party has the burden of estab-
2396 lishing a basis for listing of a water segment as a Tier 2.5 water.
2397 The Board shall return insufficient nominations to the nominating
2398 party. Generally, nominations that fail to address at least three of
2399 the qualification criteria shall be considered insufficient.

2400 **4H.1.a.1.** Upon receiving a sufficient nomination of a
2401 water or segment of a water for designation as a Tier 2.5 water pur-
2402 suant to the Board's antidegradation policy, the Board shall, within
2403 180 days of receipt of the nomination, notify each locality in which
2404 the water or segment lies and shall provide individual notice to
2405 property owners on the nominated segment. Where individual no-
2406 tice to property owners is impracticable, constructive notice by pub-
2407 lication shall be provided. The written notice shall include, at a
2408 minimum:

2409 **4H.1.a.1.a.** A description of the location of the waters or
2410 segment;

2411 **4H.1.a.1.b.** The procedures and criteria for designation as
2412 well as the impact of the designation;

2413 **4H.1.a.1.c.** The name of the person(s) making the nomina-
2414 tion; and

2415 **4H.1.a.1.d.** The name of a contact person at the Environ-
2416 mental Quality Board who is knowledgeable about the nomination
2417 of the waters or segment. After receipt of the notice of the nomina-
2418 tion, landowners, the public and localities shall be provided 60 days
2419 to comment.

2420 **4H.1.a.2. Qualification Criteria.** Factors to be consid-
2421 ered in determining whether to assign a Water of Special Concern
2422 designation to a water from another category shall include the fol-
2423 lowing:

2424 **4H.1.a.2.a.** Impact on private property owners;

2425 **4H.1.a.2.b.** Whether the interests of all affected parties
2426 have been adequately represented during the nomination and desig-
2427 nation process;

2428 **4H.1.a.2.c.** The location of the water;

2429 **4H.1.a.2.d.** Any previous special designations;

2430 **4H.1.a.2.e.** Existing water quality;

2431 **4H.1.a.2.f.** Factors that indicate unique or exceptional
2432 ecological, recreational or aesthetic resource value;

2433 **4H.1.a.2.g.** Impact on economic development in the area,
2434 including development of demonstrated natural resources; and

2435 **4H.1.a.2.h.** Other factors determined by the Board, when
2436 applicable.

2437 **4H.1.a.3. Reclassification of a Water of Special Con-**
2438 **cern.** The Board may on its own, or at the request of an interested
2439 party, consider reclassifying a Water of Special Concern to another
2440 antidegradation tier. In considering a reclassification, the Board
2441 shall review the criteria outlined in subparagraphs 4H.1.a.2.a.
2442 through 4H.1.a.2.h. above. After such consideration, the Board may
2443 reclassify a Tier 2.5 water in accordance with the notice and com-

2444 ment provisions of 46 CSR 6, Procedural Rules Governing Site
2445 Specific Revisions to Water Quality Standards.

2446 **4H.2. Listing process for Tier 3 waters.**

2447 **4H.2.a. Tier 3 Nomination Procedures.** Any interested
2448 party or the Board may nominate a water as an ONRW. After re-
2449 viewing the nomination the Board shall consider the qualification
2450 criteria and may classify the nominated water as a Tier 3 water in
2451 accordance with the notice and comment provisions of 46 CSR 6,
2452 Procedural Rules Governing Site Specific Revisions to Water Qual-
2453 ity Standards. The address for filing such petitions is West Virginia
2454 Environmental Quality Board, 1615 Washington Street, East, Room
2455 301, Charleston, West Virginia 25311-2126. The nominating party
2456 has the burden of establishing a basis for listing of a water segment
2457 as a Tier 3 water. The Board shall return insufficient nominations to
2458 the nominating party. Generally, nominations that fail to address at
2459 least three of the qualification criteria set out in paragraph 4H.2.a.2.
2460 of this rule shall be considered insufficient.

2461 **4H.2.a.1.** Upon receiving a sufficient nomination of a
2462 water or segment of a water for designation as a Tier 3 water pursu-
2463 ant to the Board's antidegradation policy, the Board shall notify
2464 each locality in which the water or segment lies and shall provide
2465 individual notice to property owners on the nominated segment.
2466 Where individual notice to property owners is impracticable, con-
2467 structive notice by publication shall be provided. The written notice
2468 shall include, at a minimum:

2469 **4H.2.a.1.a.** A description of the location of the waters or
2470 segment;

2471 **4H.2.a.1.b.** The procedures and criteria for designation as
2472 well as the impact of the designation;

2473 **4H.2.a.1.c.** The name of the person(s) making the nomina-
2474 tion; and

2475 **4H.2.a.1.d.** The name of a contact person at the Environ-
2476 mental Quality Board who is knowledgeable about the nomination
2477 of the waters or segment. After receipt of the notice of the nomina-

2478 tion, landowners, the public and localities shall be provided 60 days
2479 to comment.

2480 **4H.2.a.2. Qualification Criteria.** Factors to be consid-
2481 ered in determining whether to assign an ONRW designation to a
2482 water from another category shall include the following:

2483 **4H.2.a.2.a.** Impact on private property owners;

2484 **4H.2.a.2.b.** Whether the interests of all affected parties
2485 have been adequately represented during the nomination and desig-
2486 nation process;

2487 **4H.2.a.2.c.** The location of the water;

2488 **4H.2.a.2.d.** Any previous special designations;

2489 **4H.2.a.2.e.** Existing water quality;

2490 **4H.2.a.2.f.** Outstanding ecological value;

2491 **4H.2.a.2.g.** Outstanding recreational or aesthetic value;
2492 and

2493 **4H.2.a.2.h.** Other factors determined by the Board, when
2494 applicable.

2495 **4H.3. Public participation in antidegradation reviews.**

2496 **4H.3.a.** All antidegradation review findings shall be docu-
2497 mented by the Director and made part of the public record. The
2498 findings, including the baseline water quality, the existing uses, and
2499 the tier assigned to the water body are to be available to the public.

2500 **4H.3.b.** Any required public notice will be provided
2501 through the appropriate Class I or Class II legal advertisement in a
2502 qualified newspaper with the largest circulation for the county
2503 where the activity will occur. The notice will identify the action
2504 being considered, list all existing uses identified of the water, and
2505 call for comments from the public regarding the proposed activity.
2506 The cost of such publication will be borne by the applicant.

2507 **4H.3.c.** Public notice, opportunity for public comment,
2508 and opportunity for a public hearing, consistent with the require-
2509 ments of 47 CSR 10 section 12, will be provided of all activities
2510 proposed to be allowed after a Tier 1, 2, 2.5, or 3 antidegradation
2511 review. Such public notice may be combined with other required
2512 notifications, such as notification to agencies as part of required
2513 intergovernmental coordination or notification of a proposed permit
2514 decision.

2515 **4H.3.d.** Public notice is not required to be provided for
2516 proposed activities on Tier 1 or Tier 2 waters for which a review
2517 process has not been required, such as activities covered by a
2518 WV/NPDES general permit, except that any trading approved by
2519 the Director for antidegradation purposes will require public notice
2520 consistent with the requirements of 47 CSR 10-12.

2521 **4H.3.e.** Public notice of Tier 2 antidegradation reviews.
2522 After a full Tier 2 review has been completed for a proposed activ-
2523 ity, the public notice shall include notice of the availability of the
2524 following:

2525 **4H.3.e.1.** The decision as to whether the proposed activity
2526 has been determined to comply with the antidegradation implemen-
2527 tation rule;

2528 **4H.3.e.2.** Findings from the alternatives analysis;

2529 **4H.3.e.3.** A determination of the impact of the activity to
2530 ambient concentrations and baseline water quality;

2531 **4H.3.e.4.** The results of the socio-economic evaluation of
2532 the activity;

2533 **4H.3.e.5.** The determination regarding existence of rea-
2534 sonable and cost effective non-degrading or less degrading alterna-
2535 tives; and

2536 **4H.3.e.6.** A description of the water segment that is sub-
2537 ject to the antidegradation review.

2538 **4H.3.f.** Once the intergovernmental coordination and pub-
2539 lic notice requirements of Subpart 4H.3. are satisfied, the Director
2540 shall make a determination concerning the social or economic im-

2541 portance in the area in which the affected water bodies are located.
2542 All determinations, including determinations to prohibit the activity,
2543 shall be documented and made a part of the public record.

2544 **4H.4. Appeals.**

2545 **4H.4.a.** Final agency decisions, made after public com-
2546 ment, that identify applicable uses, designate tiers, or that find regu-
2547 lated activities to be allowed or prohibited, are final actions that are
2548 appealable as set forth in the Administrative Procedures Act. Final
2549 agency actions made by the Director are appealable to the Board.

2550

APPENDIX F-12551 **ANTIDegradation Implementation Procedures**2552 **INTERGOVERNMENTAL COORDINATION AGENCIES**

2553

STATE AGENCIES2554 **Bureau of Commerce**

2555 Division of Natural Resources

2556 Division of Forestry

2557 Development Office

2558 **Department of Health and Human Resources**

2559 Bureau for Public Health

2560 **Bureau of the Environment**

2561 Division of Environmental Protection - all offices

2562 **Department of Agriculture**

2563 Soil Conservation Agency

2564 **Department of Transportation**

2565 Division of Highways

2566 **FEDERAL AGENCIES**

2567 US Environmental Protection Agency, Region III

2568 US Fish and Wildlife Service

2569 US Army Corps of Engineers

2570 US Forest Service

2571 US Office of Surface Mining

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APPENDIX F-2

2573

WV DNR and WV DEP - Waters of Special Concern

2574

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2575

APPENDIX F-3

2576

Initial Presumptive Listing for Tier 2.5

2577	<u>DNR CODE</u>	<u>STREAM NAME</u>	<u>LENGTH (miles)</u>	<u>LENGTH (miles)</u>
2578	Tug Fork Watershed			
2579	BST-60-D	CUB BRANCH	0.72	0.72
2580	BST-60-E	GEORGE BRANCH	3.79	3.79
2581	BST-60-F	CRANE CREEK	1.22	1.22
2582	BST-60-G	HURRICANE BRANCH	2.99	2.99
2583	BST-60-H-2	WHITE OAK BRANCH	1.78	1.78
2584	BST-70-N	LITTLE SLATE CREEK	3.42	3.42
2585	BST-70-U-1	BIG BRANCH	1.86	1.86
2586	BST-70-W	JACOBS FORK	10.50	10.50
2587	BST-70-Z	VALL CREEK	2.31	2.31
2588	BST-76-E	DAYCAMP BRANCH	1.67	1.67
2589	BST-99	ELKHORN CREEK	8.41	8.41
2590			38.68	
2591	James River Watershed			
2592	J-1-A	EWIN RUN	2.64	2.64
2593	J-1-C	NORTH FORK	5.88	5.88
2594	J-2	SWEET SPRINGS CREEK	6.10	6.10
2595	J-3	COVE CREEK	6.66	6.66
2596			21.27	
2597	Kanawha River Watershed (Upper & Lower)			
2598	K-13	LITTLE SIXTEENMILE CREEK	4.45	4.45
2599	K-14-B-1	UNT OF FIVEFORK BRANCH	1.87	1.87
2600	K-39-E-3	BAYS BRANCH	1.89	1.89
2601	K-39-M-1	HOFFMAN HOLLOW	2.32	2.32
2602	K-39-O	SHREWSBURY HOLLOW	1.54	1.54
2603	K-76	LOOP CREEK	19.98	19.98
2604			32.06	
2605	Coal River Watershed			
2606	KC-10-22	WHITE OAK BRANCH	2.08	2.08
2607	KC-31-B	HOPKINS FORK	8.95	8.95
2608			11.03	
2609	Elk River Watershed			
2610	KE	ELK RIVER	5.00	5.00
2611	KE-102-A	CAMP CREEK	14.19	14.19
2612	KE-111-K	SUGAR CREEK	10.51	10.51
2613	KE-111-K-2	LITTLE SUGAR CREEK	7.61	7.61
2614	KE-117-B	RIGHT FORK	13.60	13.60
2615	KE-118	BERGOO CREEK	8.19	8.19
2616	KE-127	BIG RUN	2.53	2.53
2617	KE-129	VALLEY FORK	2.68	2.68
2618	KE-133	DRY FORK	3.80	3.80

2619	KE-135	BIG RUN	1.94	1.94
2620	KE-136	PROPS RUN	1.38	1.38
2621	KE-137	LAUREL RUN	2.63	2.63
2622	KE-138	BIG SPRING FORK	9.67	9.67
2623	KE-138-B	CUP RUN	2.02	2.02
2624	KE-139-5A	SLATY FORK	4.79	4.79
2625	KE-139-B	CROOKED FORK	2.51	2.51
2626	KE-14-P	PANTHER HOLLOW	1.55	1.55
2627	KE-50-B-10	IKE FORK	1.88	1.88
2628	KE-50-I	ROCKCAMP RUN	6.66	6.66
2629	KE-76-L-5	TUG FORK	3.83	3.83
2630	KE-76-O	POPLAR CREEK	6.29	6.29
2631	KE-76-U	JOHNSON BRANCH	2.44	2.44
2632	KE-98-B-16	DESERT FORK	4.97	4.97
2633	KE-98-C	LEFT FORK	5.73	5.73
2634	KE-98-C-1	LAURELPATCH RUN	1.51	1.51
2635	KE-98-C-11	LAUREL FORK	5.59	5.59
2636	KE-98-C-14	FALL RUN	6.06	6.06
2637	KE-98-C-15	BIG RUN	3.79	3.79
2638	KE-98-C-1-A	LONG FORK	2.56	2.56
2639			145.90	
2640	Gauley River Watershed			
2641	KG GAULEY RIVER		26.56	26.56
2642	KG-19-A	DOGWOOD CREEK	5.08	5.08
2643	KG-19-G	ANGLINS CREEK	12.77	12.77
2644	KG-19-J	BRACKENS CREEK	6.55	6.55
2645	KG-19-U-1	BROWN CREEK	3.19	3.19
2646	KG-19-U-2-C	OLD FIELD BRANCH	2.88	2.88
2647	KG-19-U-2-D	JOB KNOB BRANCH	3.85	3.85
2648	KG-19-V-5	LAUREL CREEK	3.61	3.61
2649	KG-19-V-7	KUHN BRANCH	1.91	1.91
2650	KG-20	COLLISON CREEK	4.98	4.98
2651	KG-24	HOMINY CREEK	23.40	23.40
2652	KG-24-E	GRASSY CREEK	5.68	5.68
2653	KG-24-E-2	BRUSHY MEADOW CREEK	5.23	5.23
2654	KG-24-J	PRICE FORK	2.83	2.83
2655	KG-26-K	BRUSHY FORK	5.53	5.53
2656	KG-32-J	CRANES NEST RUN	2.26	2.26
2657	KG-34-B	COAL SIDING RUN	1.50	1.50
2658	KG-34-E	LAUREL CREEK	9.18	9.18
2659	KG-34-E-11	MIDDLE BRANCH	3.34	3.34
2660	KG-34-E-13	COLD SPRING BRANCH	1.71	1.71
2661	KG-34-E-3	SPRING RUN	1.52	1.52
2662	KG-34-E-8	BEECH RUN	3.08	3.08
2663	KG-34-E-9	HOGCAMP RUN	2.55	2.55
2664	KG-34-F	LITTLE LAUREL CREEK	9.87	9.87
2665	KG-34-F-2	IMPROVEMENT BRANCH	1.86	1.86
2666	KG-34-G	SOUTH FORK	7.21	7.21
2667	KG-34-G-10	COLD KNOB FORK	5.60	5.60

2668	KG-34-G-13	BIG RUN	1.44	1.44
2669	KG-34-G-5	ELKCLICK RUN	2.10	2.10
2670	KG-34-G-6	ROCKY RUN	3.54	3.54
2671	KG-34-G-8	BECKY RUN	2.56	2.56
2672	KG-34-H	NORTH FORK	16.37	16.37
2673	KG-34-H-14	BEAR RUN	2.21	2.21
2674	KG-34-H-4	HUNTERS RUN	3.09	3.09
2675	KG-34-H-5	COATS RUN	1.08	1.08
2676	KG-34-H-9	ARMSTRONG RUN	1.24	1.24
2677	KG-45	BIG LAUREL CREEK	6.56	6.56
2678	KG-57	MILLER MILL RUN	4.37	4.37
2679	KG-58	LAUREL CREEK	2.07	2.07
2680	KG-59	BIG RUN	1.32	1.32
2681	KG-5-F-3	BEARPEN FORK	1.27	1.27
2682	KG-5-H	ASH FORK	3.09	3.09
2683	KG-5-J	NEIL BRANCH	2.65	2.65
2684	KG-6	RICH CREEK	6.74	6.74
2685	KG-60	TURKEY CREEK	4.86	4.86
2686	KG-61	HUGHES RUN	2.79	2.79
2687	KG-65	WILLIAMS CAMP RUN	1.66	1.66
2688	KG-67	STRAIGHT CREEK	1.83	1.83
2689	KG-70	BIG RUN	3.22	3.22
2690	KG-72	MIDDLE FORK	1.96	1.96
2691	KG-73	NORTH FORK	3.29	3.29
2692	KGC	CRANBERRY RIVER	38.39	38.39
2693	KGC-14	LICK BRANCH	1.22	1.22
2694	KGC-15	HANGING ROCK BRANCH	1.24	1.24
2695	KGC-19	DOGWAY FORK	8.75	8.75
2696	KGC-21	BIRCHLONG RUN	2.18	2.18
2697	KGC-23-E	CHARLES CREEK	2.59	2.59
2698	KGC-24-C	LEFT FORK	1.52	1.52
2699	KGC-3	JAKEMAN RUN	2.06	2.06
2700	KGC-4	BARRENSHE RUN	4.59	4.59
2701	KGC-7	BEE RUN	1.57	1.57
2702	KGC-8	FOXTREE RUN	1.56	1.56
2703	KGC-9	ALDRICH BRANCH	1.25	1.25
2704	KGW	WILLIAMS RIVER	34.70	34.70
2705	KGW-1	CRAIG RUN	2.00	2.00
2706	KGW-19	UPPER BANNOCK SHOALS RUN	1.83	1.83
2707	KGW-2	JONATHAN RUN	1.38	1.38
2708	KGW-20	TEA CREEK	5.96	5.96
2709	KGW-20-A	LICK CREEK	1.82	1.82
2710	KGW-21	SUGAR CREEK	3.63	3.63
2711	KGW-22	LITTLE LAUREL CREEK	2.47	2.47
2712	KGW-25	DAY RUN	3.08	3.08
2713	KGW-26	BLACK MOUNTAIN RUN	1.65	1.65
2714	KGW-27	MOUNTAIN LICK RUN	2.11	2.11
2715	KGW-3	SAWYER RUN	1.33	1.33
2716	KGW-4	SPICE RUN	1.81	1.81

2717	KGW-8	WHITE OAK FORK	2.14	2.14
2718	KGW-9	LICK BRANCH	1.43	1.43
2719			379.30	
2720	New River Watershed (Upper & Lower)			
2721	KN-17	MANN'S CREEK	3.37	3.37
2722	KN-18	EPHRAIM CREEK	4.22	4.22
2723	KN-23	BUFFALO CREEK	2.41	2.41
2724	KN-24	SLATER CREEK	5.08	5.08
2725	KN-26	PINEY CREEK	16.91	16.91
2726	KN-26-B	FAT CREEK	6.56	6.56
2727	KN-27	LAUREL CREEK	12.37	12.37
2728	KN-27-C	CHESTNUT KNOB FORK	3.54	3.54
2729	KN-29	GLADE CREEK	5.76	5.76
2730	KN-29-E	PINCH CREEK	5.71	5.71
2731	KN-32	MEADOW CREEK	2.59	2.59
2732	KN-37	FALL BRANCH	1.93	1.93
2733	KN-51-O	TURKEY CREEK	9.19	9.19
2734	KN-61	RICH CREEK	2.85	2.85
2735	KNB-12-B	LAUREL CREEK	4.86	4.86
2736	KNB-13	WAMP CREEK	9.29	9.29
2737	KNB-13-D	MASH FORK	2.91	2.91
2738	KNB-13-G	SENG BRANCH	1.48	1.48
2739	KNB-3	LITTLE BLUESTONE RIVER	4.73	4.73
2740	KNB-30	CRANE CREEK	5.40	5.40
2741			111.16	
2742	Greenbrier River Watershed			
2743	KNG	GREENBRIER RIVER	25.30	25.30
2744	KNG(S)-1	MILLIGAN CREEK	5.71	5.71
2745	KNG(S)-2-B	FLYNN CREEK	4.27	4.27
2746	KNG(S)-3-A	BURNS RUN	4.08	4.08
2747	KNG-23	SECOND CREEK	6.06	6.06
2748	KNG-28	ANTHONY CREEK	15.70	15.70
2749	KNG-28-D	LITTLE CREEK	8.08	8.08
2750	KNG-28-P-1	LAUREL RUN	4.20	4.20
2751	KNG-28-Q-2	TWOMILE RUN	1.55	1.55
2752	KNG-47	BEAVER CREEK	8.18	8.18
2753	KNG-49	SWAGO CREEK	3.77	3.77
2754	KNG-53-G	BARCLAY RUN	1.71	1.71
2755	KNG-53-H	DOUTHAT CREEK	9.02	9.02
2756	KNG-60	LAUREL RUN	3.00	3.00
2757	KNG-66-D	SHOCK RUN	4.46	4.46
2758	KNG-66-H-2	LEFT PRONG	3.29	3.29
2759	KNG-68	DEER CREEK	8.75	8.75
2760	KNG-68-A	NORTH FORK	10.73	10.73
2761	KNG-68-A-3	SUTTON RUN	1.60	1.60
2762	KNG-68-A-4	TACKER FORK	2.46	2.46
2763	KNG-68-A-5	BLACK RUN	2.43	2.43
2764	KNG-68-A-6	ELLEBER RUN	3.08	3.08
2765	KNG-68-A-6-A	GRIFFIN RUN	1.69	1.69

2766	KNG-70	LEATHERBARK RUN	4.69	4.69
2767	KNG-74	TROUT RUN	1.14	1.14
2768	KNG-75	ALLEGHENY RUN	5.33	5.33
2769	KNG-77	ELK CREEK	2.56	2.56
2770	KNG-78	EAST FORK	19.87	19.87
2771	KNG-78-A	JOHNS RUN	2.21	2.21
2772	KNG-78-C	LITTLE RIVER	6.28	6.28
2773	KNG-78-G	FIVEMILE HOLLOW	2.29	2.29
2774	KNG-78-H	POCA RUN	2.73	2.73
2775	KNG-78-H-1	LONG RUN	2.85	2.85
2776	KNG-78-K	MULLENAX RUN	2.92	2.92
2777	KNG-78-L	ABES RUN	2.65	2.65
2778	KNG-79	WEST FORK	17.68	17.68
2779	KNG-79-B	FILL RUN	1.91	1.91
2780	KNG-79-C	LITTLE RIVER	7.59	7.59
2781	KNG-79-C-1	SPAN OAK RUN	2.32	2.32
2782	KNG-79-C-2	CLUBHOUSE RUN	11.02	11.02
2783	KNG-79-C-3	HINKLE RUN	10.41	10.41
2784			245.59	
2785	Little Kanawha River Watershed			
2786	LK-111	LAUREL RUN	6.04	6.04
2787	LK-131	GETOUT RUN	3.01	3.01
2788	LK-86-E-4	PINE RUN	1.57	1.57
2789	LK-95-L	CARPENTER FORK	5.04	5.04
2790			15.66	
2791	Cheat River Watershed			
2792	MC-12-A	LAUREL RUN	6.13	6.13
2793	MC-12-B-3	HOG RUN	4.42	4.42
2794	MC-12-B-6	MILL RUN	3.95	3.95
2795	MC-18	ROARING CREEK	8.03	8.03
2796	MC-1-A	RYAN HOLLOW	2.33	2.33
2797	MC-20	ELSEY RUN	3.40	3.40
2798	MC-2-A	DARNELL RUN	2.08	2.08
2799	MC-33-A	FLAG RUN	5.51	5.51
2800	MC-36	WOLF CREEK	6.90	6.90
2801	MC-41	LONG RUN	1.22	1.22
2802	MC-45	TOBES RUN	1.16	1.16
2803	MC-46-B	RIGHT FORK	3.80	3.80
2804	MC-47	JOHNATHAN RUN	1.86	1.86
2805	MC-50	UPPER JOHNATHAN RUN	2.53	2.53
2806	MC-51	CLOVER RUN	1.34	1.34
2807	MC-51-	LEFT FORK	9.16	9.16
2808	MC-51-A	RIGHT FORK	5.45	5.45
2809	MC-51-B	INDIAN FORK	4.16	4.16
2810	MC-52	MINEAR RUN	6.63	6.63
2811	MC-52-0.7	BRIDGE RUN	1.12	1.12
2812	MC-52-A	ROARING RUN	2.12	2.12
2813	MC-53	DRY RUN	2.73	2.73
2814	MC-54	HORSESHOE RUN	15.55	15.55

2815	MC-54-A	MIKE RUN	3.86	3.86
2816	MC-54-C	MAXWELL RUN	2.92	2.92
2817	MC-54-D	HYLE RUN	3.92	3.92
2818	MC-54-E	LICK DRAIN	1.79	1.79
2819	MC-54-F	LAUREL RUN	2.87	2.87
2820	MC-54-G	LYNN RUN	1.33	1.33
2821	MC-54-H	THUNDERSTRUCK RUN	3.89	3.89
2822	MC-54-I	LEADMINE RUN	4.81	4.81
2823	MC-54-I-1	LIME HOLLOW RUN	1.14	1.14
2824	MC-54-J	WOLF RUN	1.80	1.80
2825	MC-54-K	TWELVEMILE RUN	2.25	2.25
2826	MC-55	DRY RUN	3.19	3.19
2827	MC-56	MILL RUN	4.77	4.77
2828	MC-57	WOLF RUN	1.90	1.90
2829	MC-60	DRY FORK	3.76	3.76
2830	MC-60-A	ROARING RUN	0.77	0.77
2831	MC-60-C	ELKLICK RUN	4.52	4.52
2832	MC-60-C-3	JOHN B. HOLLOW	1.12	1.12
2833	MC-60-D-10	SAND RUN	3.19	3.19
2834	MC-60-D-11	YOAKUM RUN	2.48	2.48
2835	MC-60-D-LOWER	BLACKWATER RIVER	2.62	2.62
2836	MC-60-G	RED RUN	5.56	5.56
2837	MC-60-I	MILL RUN	2.92	2.92
2838	MC-60-J	ELKLICK RUN	2.59	2.59
2839	MC-60-K	GLADY FORK	31.31	31.31
2840	MC-60-K-1	THREE SPRING RUN	1.25	1.25
2841	MC-60-K-11	MCCRAY CREEK	2.41	2.41
2842	MC-60-K-15	DANIELS CREEK	3.18	3.18
2843	MC-60-K-16	WEST FORK GLADY FORK	6.13	6.13
2844	MC-60-K-16	WEST FORK GLADY FORK	4.27	4.27
2845	MC-60-K-17	EAST FORK GLADY FORK	7.28	7.28
2846	MC-60-K-17-A	LOUK RUN	1.19	1.19
2847	MC-60-K-2	PANTHER CAMP RUN	1.73	1.73
2848	MC-60-K-2-A	HOG RUN	1.17	1.17
2849	MC-60-K-4	FIVE LICK CREEK	1.71	1.71
2850	MC-60-K-5	WOODFORD RUN	1.14	1.14
2851	MC-60-K-6	BAKER CAMP RUN	1.19	1.19
2852	MC-60-L	BIG RUN	3.69	3.69
2853	MC-60-N	LAUREL FORK	21.52	21.52
2854	MC-60-N-4	BEAVERDAM RUN	2.12	2.12
2855	MC-60-N-8	FIVE LICK RUN	2.45	2.45
2856	MC-60-O	RED CREEK	6.77	6.77
2857	MC-60-O-1	BIG RUN	3.47	3.47
2858	MC-60-O-2	FLATROCK RUN	2.89	2.89
2859	MC-60-O-3	GANDY RUN	2.26	2.26
2860	MC-60-P	SPRUCE RUN	3.25	3.25
2861	MC-60-Q	HORSECAMP RUN	4.59	4.59
2862	MC-60-R	TORY CAMP RUN	2.43	2.43
2863	MC-60-T	GANDY CREEK	15.68	15.68

2864	MC-60-T-1	LOWER TWO SPRING RUN	2.29	2.29
2865	MC-60-T-10	NARROW RIDGE RUN	2.16	2.16
2866	MC-60-T-11	WARNER RUN	2.21	2.21
2867	MC-60-T-2	UPPER TWO SPRING RUN	2.53	2.53
2868	MC-60-T-3	SWALLOW ROCK RUN	1.82	1.82
2869	MC-60-T-6	TAYLOR RUN	0.87	0.87
2870	MC-60-T-8	BIG RUN	3.75	3.75
2871	MC-60-T-9	GRANTS BRANCH	2.80	2.80
2872	MCS	SHAVERS FORK	7.26	7.26
2873	MCS-12	LITTLE LAUREL RUN	1.31	1.31
2874	MCS-13	LITTLE BLACK RUN	4.74	4.74
2875	MCS-14	CLIFTON RUN	2.11	2.11
2876	MCS-15	RATTLESNAKE RUN	5.03	5.03
2877	MCS-16	JOHNS RUN	2.70	2.70
2878	MCS-2	HAWK RUN	1.09	1.09
2879	MCS-22	TAYLOR RUN	2.97	2.97
2880	MCS-22-A	STALNAKER RUN	1.61	1.61
2881	MCS-28	UPPER POND LICK	6.29	6.29
2882	MCS-3	HADDIT RUN	2.68	2.68
2883	MCS-33	FISHING HAWK CREEK	3.60	3.60
2884	MCS-3-A	SOUTH BRANCH	3.56	3.56
2885	MCS-4	JOBS RUN	1.72	1.72
2886	MCS-40	YOKUM RUN	2.56	2.56
2887	MCS-43	GLADE RUN	2.67	2.67
2888	MCS-46	RED RUN	2.75	2.75
2889	MCS-47	BLISTER RUN	1.95	1.95
2890	MCS-48	FISH HATCHERY RUN	2.66	2.66
2891	MCS-49	LAMBERT RUN	3.23	3.23
2892	MCS-5	LAUREL RUN	3.48	3.48
2893	MCS-50	FIRST FORK	5.42	5.42
2894	MCS-54	BEAVER CREEK	1.74	1.74
2895	MCS-55	SECOND FORK	4.15	4.15
2896	MCS-57	BLACK RUN	2.28	2.28
2897	MCS-6	PLEASANT RUN	3.52	3.52
2898	MCS-6-B	AARONS RUN	2.35	2.35
2899	MCS-7	STONELICK RUN	1.68	1.68
2900	MCS-8	LAUREL RUN	1.18	1.18
2901	MCS-9	NAIL RUN	1.74	1.74
2902			415.11	
2903	Tygart River Watershed			
2904	MT-18-E-5-B	FROG RUN	2.36	2.36
2905	MT-23-F	MILL RUN	4.03	4.03
2906	MT-23-H	MILL RUN	3.72	3.72
2907	MT-38	ZEBBS CREEK	4.04	4.04
2908	MT-44	MATHEUS RUN	1.66	1.66
2909	MT-45-C	RIGHT FORK	3.24	3.24
2910	MT-47	BEAVER CREEK	6.20	6.20
2911	MT-50-A	RIGHT FORK OF FILES CREEK	8.33	8.33
2912	MT-50-A-1	LIMEKILN RUN	2.12	2.12

2913	MT-50-B	LEFT FORK FILES CREEK	2.84	2.84
2914	MT-61	SHAVERS RUN	6.95	6.95
2915	MT-64	MILL CREEK	10.69	10.69
2916	MT-64-C	GLADE RUN	1.59	1.59
2917	MT-64-E	MEATBOX RUN	1.19	1.19
2918	MT-64-F	POTATOHOLE FORK	1.84	1.84
2919	MT-66	RIFFLE CREEK	1.91	1.91
2920	MT-66-B	MCGEE RUN	3.40	3.40
2921	MT-66-C	BACK FORK	2.01	2.01
2922	MT-67	RAFE RUN	1.54	1.54
2923	MT-68	BECKY CREEK	9.41	9.41
2924	MT-68-A	BIG BRANCH	2.25	2.25
2925	MT-72	HAMILTON RUN	2.49	2.49
2926	MT-73	CLAY RUN	2.61	2.61
2927	MT-74	ELKWATER FORK	5.20	5.20
2928	MT-74-A	MOWRY RUN	2.34	2.34
2929	MT-74-B	LIMEKILN RUN	1.93	1.93
2930	MT-75	STEWART RUN	8.08	8.08
2931	MT-77 ^c	CONLEY RUN	7.10	7.10
2932	MT-78	RALSTON RUN	6.99	6.99
2933	MT-79	WINDY RUN	4.60	4.60
2934	MT-80	LOGAN RUN	2.49	2.49
2935	MT-81	BIG RUN	5.14	5.14
2936	MTB-25-A	RIGHT FORK	3.88	3.88
2937	MTB-27	PANTHER FORK	4.08	4.08
2938	MTB-28	BIG RUN	3.03	3.03
2939	MTB-31	RIGHT FORK	2.24	2.24
2940	MTB-31-B	REGER RUN	1.13	1.13
2941	MTB-31-C	ALEC RUN	1.93	1.93
2942	MTB-31-D	MILLSITE RUN	3.76	3.76
2943	MTB-32	LEFT FORK	6.85	6.85
2944	MTB-32-D	BEARCAMP RUN	5.00	5.00
2945	MTB-32-H	BEECH RUN	4.62	4.62
2946	MTM	MIDDLE FORK RIVER	7.32	7.32
2947	MTM-1	HANGING RUN	4.68	4.68
2948	MTM-11	RIGHT FORK MIDDLE FORK RIVER	7.42	7.42
2949	MTM-11-D	JACKSON FORK	3.88	3.88
2950	MTM-11-E	JENKS FORK	3.70	3.70
2951	MTM-13	LONG RUN	7.66	7.66
2952	MTM-16	CASSITY FORK	4.25	4.25
2953	MTM-16-A	PANTHER RUN	4.43	4.43
2954	MTM-21	PLEASANT RUN	1.82	1.82
2955	MTM-22	LAUREL RUN	2.57	2.57
2956	MTM-23	LAUREL BRANCH	4.00	4.00
2957	MTM-24	SUGAR RUN	2.30	2.30
2958	MTM-25	SCHOOLCRAFT RUN	3.08	3.08
2959	MTM-25-A	BIRCH FORK	1.48	1.48
2960	MTM-26	BIRCH FORK	3.56	3.56
2961	MTM-27	MITCHELL LICK FORK	2.52	2.52

2962			231.49	
2963	Upper Ohio North			
2964	O-102-A	WHITEOAK RUN	0.48	0.48
2965	Twelvepole Creek Watershed			
2966	O-2-H-2-A	STOWERS BRANCH	0.46	0.46
2967	O-2-P-23	ARKANSAS BRANCH	0.75	0.75
2968	O-2-P-25	SWEETWATER BRANCH	2.00	2.00
2969	O-2-P-26	LONG BRANCH	2.59	2.59
2970	O-2-P-27	SPRUCE FORK	1.84	1.84
2971	O-2-Q-14	RICH CREEK	1.32	1.32
2972	O-2-Q-16	BLUELICK BRANCH	2.28	2.28
2973	O-2-Q-18-A	LITTLE LAUREL CREEK	2.09	2.09
2974			13.33	
2975	Upper Ohio South			
2976	O-77-B	LONG RUN	4.51	4.51
2977	Guyandotte River Watershed			
2978	OG-102	BRICKLE BRANCH	1.64	1.64
2979	OG-29-C	HORSESHOE BRANCH	1.98	1.98
2980	OG-32-F	PLUM BRANCH	2.35	2.35
2981	OG-34-E	STEER FORK	1.64	1.64
2982	OG-37	LITTLE UGLY CREEK	1.42	1.42
2983	OG-38	BIG UGLY CREEK	8.49	8.49
2984	OG-38-A	PIGEONROOST CREEK	3.62	3.62
2985	OG-38-D	LAUREL CREEK	2.60	2.60
2986	OG-61	BUFFALO CREEK	3.01	3.01
2987	OG-96-A	STURGEON BRANCH	1.57	1.57
2988	OGM-8-B	LEFT FORK	2.75	2.75
2989			31.06	
2990	Potomac Direct Drains Watershed			
2991	P-16	ROCKWELL RUN	10.39	10.39
2992	P-9-G-1	NORTH FORK INDIAN RUN	1.49	1.49
2993	P-9-G-2	SOUTH FORK INDIAN RUN	3.76	3.76
2994			15.63	
2995	Cacapon River Watershed			
2996	PC-0.9	CONOR HOLLOW	7.73	7.73
2997	PC-1	CONSTANT RUN	5.23	5.23
2998	PC-10	EDWARDS RUN	7.00	7.00
2999	PC-17	HAWK RUN	4.62	4.62
3000	PC-23	TROUT RUN	16.62	16.62
3001	PC-24-H	LOWER COVE RUN	4.63	4.63
3002			45.83	
3003				
3004	North Branch / Potomac River Watershed			
3005	PNB-14	HOWELL RUN	3.83	3.83
3006	PNB-15	DEEP RUN	4.75	4.75

3007	PNB-15-A	CRANBERRY RUN	2.66	2.66
3008	PNB-16-B	WYCKOFF RUN	2.43	2.43
3009	PNB-18	DIFFICULT CREEK	5.17	5.17
3010	PNB-18-B-1	JOHNNYCAKE RUN	3.28	3.28
3011			22.11	
3012	South Branch / Potomac River Watershed			
3013	PSB-13	MILL RUN	8.95	8.95
3014	PSB-21-F	DUMPLING RUN	2.60	2.60
3015	PSB-21-K	ROUGH RUN	6.92	6.92
3016	PSB-25-C-2	SPRING RUN	2.98	2.98
3017	PSB-28-A-1	BIG RUN	2.61	2.61
3018	PSB-28-A-2	LAUREL RUN	3.17	3.17
3019	PSB-28-B	SAMUEL RUN	2.85	2.85
3020	PSB-28-C	BROAD RUN	2.39	2.39
3021	PSB-28-D	MOYER FORK	7.92	7.92
3022	PSB-28-E	HIGH RIDGE RUN	2.28	2.28
3023	PSB-28-EE	BIG RUN	12.84	12.84
3024	PSB-28-EE-2	SAWMILL BRANCH	3.22	3.22
3025	PSB-28-EE-2-A	BACK RUN	3.39	3.39
3026	PSB-28-EE-3	TEETER CAMP RUN	3.71	3.71
3027	PSB-28-EE-3-A	HEMLOCK RUN	1.91	1.91
3028	PSB-28-EE-3-B	LEONARD SPRING HOLLOW	4.64	4.64
3029	PSB-28-EE-3-C	MIDDLE RIDGE HOLLOW	4.81	4.81
3030	PSB-28-EE-3-D	BUD HOLLOW	3.54	3.54
3031	PSB-28-EE-4	ELK RUN	3.93	3.93
3032	PSB-28-G	ZEKE RUN	3.70	3.70
3033	PSB-28-GG-1	VANCE RUN	3.27	3.27
3034	PSB-28-GG-2	SAMS RUN	1.10	1.10
3035	PSB-28-GG-2-A	LITTLE LOW PLACE HOLLOW	1.10	1.10
3036	PSB-28-I	POWDERMILL RUN	2.84	2.84
3037	PSB-28-K	SENECA CREEK	20.26	20.26
3038	PSB-28-K-1	BRUSHY RUN	7.79	7.79
3039	PSB-28-K-2	ROARING CREEK	6.13	6.13
3040	PSB-28-K-2-B	LONG RUN	2.23	2.23
3041	PSB-28-K-3	HORSECAMP RUN	4.06	4.06
3042	PSB-28-K-3-B	WAMSLEY RUN	1.52	1.52
3043	PSB-28-K-4	STRADER RUN	2.56	2.56
3044	PSB-28-K-5	GULF RUN	1.46	1.46
3045	PSB-28-K-6	WHITES RUN	3.86	3.86
3046	PSB-28-K-6-A	LOWER GULF RUN	4.67	4.67
3047	PSB-28-K-6-B	UPPER GULF RUN	2.67	2.67
3048	PSB-28-R	BLIZZARD RUN	3.60	3.60
3049	PSB-28-S	BRIERY GAP RUN	2.65	2.65
3050	PSB-28-T	LAUREL RUN	2.74	2.74
3051	PSB-29	REDMAN RUN	3.41	3.41
3052	PSB-30	LONG RUN	2.88	2.88
3053	PSB-32	BRIGGS RUN	4.57	4.57
3054	PSB-33	REEDS CREEK	11.16	11.16
3055	PSB-40	PETERS RUN	5.08	5.08

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3056	PSB-47	THORN CREEK	9.08	9.08
3057	PSB-9	MILL CREEK	25.38	25.38
3058			224.40	
3059	Shenandoah River Watershed (Hardy County)			
3060	S-9-A	CAPON RUN	2.19	2.19
3061	Total number of streams			444
3062	Total Miles			2006.80

§64-3-3. Solid waste management board.

1 (a) The legislative rule filed in the state register on the
2 twenty-ninth day of August, two thousand, authorized under
3 the authority of section twenty-three, article four, chapter
4 twenty-two-c, of this code, relating to the solid waste man-
5 agement board (developing, updating and amending of com-
6 prehensive litter and solid waste control plans, 54 CSR 3), is
7 authorized.

8 (b) The legislative rule filed in the state register on the
9 twenty-ninth day of August, two thousand, authorized under
10 the authority of section twenty-three, article four, chapter
11 twenty-two-c, of this code, relating to the solid waste man-
12 agement board (development of commercial and solid waste
13 facility siting plans, 54 CSR 4), is authorized.

CHAPTER 184

(Com. Sub. for H. B. 2660 — By Delegates Mahan,
Wills, Cann, Komlnar, Faircloth and Riggs)

[Passed April 10, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article four, 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 culture and history to promulgate a legislative rule relating to cultural facilities and capital resources grant program; and authorizing the division of culture and history to promulgate a legislative rule relating to records preservation grant program for political subdivisions.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 4. AUTHORIZATION FOR DEPARTMENT OF EDUCATION
AND THE ARTS TO PROMULGATE LEGISLATIVE
RULES.**

§64-4-1. Division of culture and history.

- 1 (a) The legislative rule filed in the state register on the
- 2 sixteenth day of June, two thousand, authorized under the
- 3 authority of section three, article one, chapter twenty-nine of

4 this code, modified by the division of culture and history to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the twenty-
7 eighth day of August, two thousand, relating to the division
8 of culture and history (cultural facilities and capital resources
9 grant program, 82 CSR 7), is authorized.

10 (b) The legislative rule filed in the state register on the
11 thirtieth day of August, two thousand, authorized under the
12 authority of section six, article one, chapter twenty-nine of
13 this code, modified by the division of culture and history to
14 meet the objections of the legislative rule-making review
15 committee and refiled in the state register on the twenty-sixth
16 day of October, two thousand, relating to the division of cul-
17 ture and history (records preservation grant program for po-
18 litical subdivisions, 82 CSR 8), is authorized.

CHAPTER 185

**(Com. Sub. for S. B. 295 — Senators Ross,
Anderson, Minard, Snyder, Unger and Minear)**

[Passed April 13, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article five, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; continuing rules previously promulgated by state agencies and boards; legislative mandate or authorization for the promulgation of certain legislative rules; authorizing certain of the agencies to pro-

mulgate 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 health to promulgate a legislative rule relating to public water systems operators; authorizing the division of health to promulgate a legislative rule relating to nursing home licensure; authorizing the division of health to promulgate a legislative rule relating to radiological health; authorizing the division of health to promulgate a legislative rule relating to newborn hearing screening; authorizing the division of health to promulgate a legislative rule relating to specialized multi-patient medical transport; authorizing the division of health to promulgate a legislative rule relating to the body piercing studio business; authorizing the division of health to promulgate a legislative rule relating to needlestick injury prevention; authorizing the division of human services to promulgate a legislative rule relating to child placing agencies licensure; authorizing the support enforcement commission to promulgate a legislative rule relating to obtaining support from federal and state income tax refunds; authorizing the support enforcement commission to promulgate a legislative rule relating to interstate income withholding; and authorizing the support enforcement commission to promulgate a legislative rule relating to the termination of income withholding.

Be it enacted by the Legislature of West Virginia:

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

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

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

§64-5-2. Division of human services.

§64-5-3. Support enforcement commission.

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

1 (a) The legislative rule filed in the state register on the
2 twenty-ninth day of August, two thousand, authorized under
3 the authority of section four, article one, chapter sixteen of
4 this code, modified by the division of health to meet the ob-
5 jections of the legislative rule-making review committee and
6 refiled in the state register on the twenty-second day of Janu-
7 ary, two thousand one, relating to the division of health (pub-
8 lic water systems operators, 64 CSR 4), is authorized with the
9 following amendments:

10 “On page 3, after subdivision 4.1.b. by adding a new
11 subdivision 4.1.c. to read as follows:

12 4.1.c. Community and nontransient noncommunity pub-
13 lic water systems classified as 1D systems on or before the
14 effective date of this rule will remain classified as 1D sys-
15 tems until July 1, 2004, unless treatment modifications do not
16 require a higher classification;

17 On page 5, in subdivision 5.3.d. after the words “em-
18 ployed by a” by adding the words “community or
19 nontransient noncommunity”;

20 On page 6, after subsection 7.2 by adding a new section
21 7.3 to read as follows:

22 7.3. Any operator holding Class 1D certification em-
23 ployed on or before the effective date of this rule by a com-
24 munity or nontransient noncommunity public water system
25 who meets the minimum education requirements or substi-
26 tutes applicable experience on a year-for-year basis to meet
27 the minimum educational requirements may upgrade to a
28 Class 1 certification by passing the certification examination
29 on or before July 1, 2004;

30 On page 8, subdivision 10.2.b. after the words “shall
31 complete” by striking out the words “twenty-four (24)” and
32 inserting in lieu thereof the word “required”;

33 On page 8, subdivision 10.2.b. after the words “certifica-
34 tion period” by adding a new sentence to read as follows:

35 “Class 1 operators are required to complete twelve (12)
36 continuing education hours and Class 11 and higher classifi-
37 cations must complete twenty-four (24) continuing education
38 hours.”;

39 And,

40 On page 14, in the note at the end of the chart after the
41 word “for” by striking out the words “Class I” and inserting
42 in lieu thereof the words “Class II”.

43 (b) The legislative rule filed in the state register on the
44 thirtieth day of August, two thousand, authorized under the
45 authority of section five, article five-c, chapter sixteen of this
46 code, modified by the division of health to meet the objec-
47 tions of the legislative rule-making review committee and
48 refiled in the state register on the nineteenth day of January,
49 two thousand one, relating to the division of health (nursing

50 home licensure, 64 CSR 13), is authorized with the following
51 amendments:

52 “On page 14 of the rule, subdivision 3.10.a., following
53 the word ‘The’ by striking the words ‘nursing home’ and
54 inserting in lieu thereof the word “director.”

55 And,

56 On page 82 of the rule, subdivision 15.3.c., by following
57 the words “been sited, the” by striking the words “nursing
58 home” and inserting in lieu thereof the word “director.”.

59 (c) The legislative rule filed in the state register on the
60 thirtieth day of August, two thousand, authorized under the
61 authority of section four, article one, chapter sixteen of this
62 code, relating to the division of health (radiological health, 64
63 CSR 23), is authorized.

64 (d) The legislative rule filed in the state register on the
65 seventh day of June, two thousand, authorized under the au-
66 thority of section two, article twenty-two-a, chapter sixteen
67 of this code, modified by the division of health to meet the
68 objections of the legislative rule-making review committee
69 and refiled in the state register on the twenty-ninth day of
70 August, two thousand, relating to the division of health (new-
71 born hearing screening, 64 CSR 24), is authorized.

72 (e) The legislative rule filed in the state register on the
73 twenty-ninth day of August, two thousand, authorized under
74 the authority of section twenty-three, article four-c, chapter
75 sixteen of this code, modified by the division of health to
76 meet the objections of the legislative rule-making review
77 committee and refiled in the state register on the twelfth day
78 of December, two thousand, relating to the division of health
79 (specialized multi-patient medical transport, 64 CSR 29), is
80 authorized.

81 (f) The legislative rule filed in the state register on the
82 thirtieth day of August, two thousand, authorized under the
83 authority of section four, article thirty-seven, chapter sixteen
84 of this code, modified by the division of health to meet the
85 objections of the legislative rule-making review committee
86 and refiled in the state register on the fifteenth day of Decem-
87 ber, two thousand, relating to the division of health (body
88 piercing studio business, 64 CSR 80), is authorized.

89 (g) The legislative rule filed in the state register on the
90 twenty-ninth day of August, two thousand, authorized under
91 the authority of section two, article thirty-six, chapter sixteen
92 of this code, modified by the division of health to meet the
93 objections of the legislative rule-making review committee
94 and refiled in the state register on the twelfth day of Decem-
95 ber, two thousand, relating to the division of health
96 (needlestick injury prevention, 64 CSR 82), is authorized
97 with the following amendments:

98 “On page 3, subdivision 4.1.d. after the colon by adding
99 the words ‘*Provided*, That the requirements of the Occupa-
100 tional Exposure to Bloodborne Pathogens; Needlesticks and
101 Other Sharps Injuries; Final Rule, 29 CFR Part 1910,
102 www.osha-slc.gov/needlesticks/index.html, attached hereto
103 as Appendix 1 are met.’;

104 On page 6, subsection 6.2 after the word ‘Health’ by
105 striking out the word ‘and’;

106 On page 6, subsection 6.2 after the word ‘Affairs’ by
107 adding the words ‘and product usage experience of hospi-
108 tals.’;

109 On page 8, section 10, before the word ‘Sharps’ by add-
110 ing the numbers ‘10.1.’;

111 And,

112 On page 8, section 10, at the end of the newly numbered
113 subsection 10.1 by adding a new subsection 10.2 to read as
114 follows:

115 10.2. The division of health, shall as part of its review of
116 sharps injury logs determine whether injuries have occurred
117 due to a lack of sharps containers. The division will report
118 any noncompliance with the sharps containers requirement to
119 the Office of Health Facilities Certification and Licensure.”

§64-5-2. Division of human services.

1 The legislative rule filed in the state register on the thirti-
2 eth day of August, two thousand, under the authority of sec-
3 tion two, article two-b, chapter forty-nine of this code, modi-
4 fied by the division of human services to meet the objections
5 of the legislative rule-making review committee and refiled
6 in the state register on the twenty-second day of February,
7 two thousand one, relating to the division of human resources
8 (child placing agencies licensure, 78 CSR 2), is authorized
9 with the following amendments:

10 ‘On page 2, subsection 3.20. after the words “or the” by
11 striking out the words “Department of Military Affairs and
12 Public Safety” and inserting in lieu thereof the words “Divi-
13 sion of Juvenile Services”;

14 On page 10, paragraph 6.6.a.1. after the word “race” by
15 striking out the word “religion” and inserting in lieu thereof
16 the words “biological family’s religious preference, if any”;

17 On page 22, section heading 9.5. by striking out the word
18 “Religion” and inserting in lieu thereof the words “Religious
19 preferences”;

20 On page 23, subsection 9.5.a. after “orientation” by add-
21 ing the words “if any,”;

22 On page 23, subsection 9.5.b. after the word “religious”
23 by striking out the word “practices” and inserting in lieu
24 thereof the words “preferences, if any.”;

25 On page 23, subsection 9.5.c. after the word “child” by
26 adding a comma and the words “if any” and a comma”;

27 On page 23, subsection 9.5.c. after the word “choice” by
28 adding the words “if he or she expresses one”; and,

29 On page 27, by striking paragraph 10.5.f.4. and renum-
30 bering the remaining paragraphs; and,

31 On page 27, paragraph 10.5.f.5., re-numbered as para-
32 graph 10.5.f.4., after the words “special interests”, by insert-
33 ing the words “religious preferences if any”; and,

34 On page 33, subdivision 12.2.n. after the word “Code” by
35 striking out the numbers and words “49-4-1 et seq.” and in-
36 sserting in lieu thereof the numbers and words “48-4-1 et
37 seq.”;

38 On page 33, section heading 13.1. by striking out the
39 words “Character and Personal Requirements.” and inserting
40 in lieu thereof the words “Personal Characteristics.”;

41 On page 33, subsection 13.1.a. by striking out the period
42 and adding the words “and shall provide verification of mari-
43 tal status, if applicable, upon request.”;

44 On page 33, subsection 13.1.d. by striking out the words
45 “that includes his or her” and inserting in lieu thereof the
46 words “in his or her own words which may include”;

47 On page 33, paragraph 13.1.d.4. after the word “beliefs”
48 by adding a comma and the words “if any” and a comma;

49 On page 33, paragraph 13.1.d.5. by striking out the para-
50 graph in its entirety and renumbering the remaining para-
51 graphs;

52 On page 34, subsection 13.3. by striking out the subsec-
53 tion in its entirety and renumbering the remaining subsec-
54 tions;

55 On page 35, subdivision 13.7.c., re-numbered as subdivi-
56 sion 13.6.c., after the words "household member has any", by
57 striking out the words "arrests or"; and,

58 And,

57 On page 42, subdivision 22.1.a. after the word "Code" by
58 striking out the numbers and words "§49-4-1 et seq. and §49-
59 4A-1 et seq." and inserting in lieu thereof the numbers and
60 words "§48-4-1 et seq. and §48-4A-1 et seq."

§64-5-3. Support enforcement commission.

1 (a) The legislative rule 97 CSR 3 heretofore authorized
2 under section nine, article two, chapter forty-eight-a of this
3 code relating to obtaining support from federal and state
4 income tax refunds by the support enforcement commission,
5 is hereby repealed.

6 (b) The legislative rule 97 CSR 4 heretofore authorized
7 under section nine, article two, chapter forty-eight-a of this
8 code relating to obtaining support from federal and state
9 income tax refunds by the support enforcement commission,
10 is hereby repealed.

11 (c) The legislative rule filed 97 CSR 11 heretofore autho-
12 rized under section nine, article two, chapter forty-eight-a of
13 this code relating to obtaining support from federal and state
14 income tax refunds by the support enforcement commission,
15 is hereby repealed.

CHAPTER 186

**(Com. Sub. for H. B. 2655 — By Delegates Mahan,
Wills, Cann, Kominar, Faircloth and Riggs)**

[Passed April 10, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article six, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, 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 corrections to promulgate a legislative rule relating to parole supervision; and authorizing the division of corrections to promulgate a legislative rule relating to electronic monitoring of offenders.

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.

1 (a) The legislative rule filed in the state register on the
2 first day of September, two thousand, authorized under the
3 authority of section two, article thirteen, chapter sixty-two of
4 this code, modified by the division of corrections to meet the
5 objections of the legislative rule-making review committee
6 and refiled in the state register on the twenty-fifth day of
7 October, two thousand, relating to the division of corrections
8 (parole supervision, 90 CSR 2), is authorized.

9 (b) The legislative rule filed in the state register on the
10 first day of September, two thousand, authorized under the
11 authority of section fourteen, article one, chapter twenty-five
12 of this code, modified by the division of corrections to meet
13 the objections of the legislative rule-making review commit-
14 tee and refiled in the state register on the twenty-fifth day of
15 October, two thousand, relating to the division of corrections
16 (electronic monitoring of offenders, 90 CSR 8), is authorized.

CHAPTER 187

**(Com. Sub. for H. B. 2717 — By Delegates Mahan,
Wills, Cann, Kominar, Faircloth and Riggs)**

[Passed April 12, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article seven, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive 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 tax commissioner to promulgate a legislative rule relating to the valuation of public utility property for ad valorem property tax purposes; authorizing the tax commissioner to promulgate a legislative rule relating to the valuation of the percentage of completion of improvements and infrastructure development in a recorded plan or plat; authorizing the tax commissioner to promulgate a legislative rule relating to bingo; authorizing the tax commissioner to promulgate a legislative rule relating to the cigarette excise tax; authorizing the tax commissioner to promulgate a legislative rule relating to charitable raffles; authorizing the tax commissioner to promulgate a legislative rule relating to the exchange of information agreement between the state tax division and the alcohol beverage control commission; authorizing the insurance commissioner to promulgate a legislative rule relating to standards for uniform health care administration; authorizing the insurance commissioner to promulgate a legislative rule relating to examiners' compensation, qualifications and classification; 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 AIDS; authorizing the insurance commissioner to promulgate a legislative rule relating to continuing education for insurance agents; authorizing the alcohol beverage control commissioner to promulgate a legislative rule relating to the licensing of retail liquor stores; authorizing the alcohol beverage control commissioner to promulgate a legislative rule relating to cigarettes produced for export and imported cigarettes; authorizing the alcohol beverage control commissioner to promulgate a legislative rule relating to prohibiting the sale of tobacco products in vending machines; authorizing the commissioner of banking to promulgate a legislative rule relating to the legal lending limit; and authorizing the racing commission to promulgate a legislative rule relating to thoroughbred racing.

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. AUTHORITY FOR DEPARTMENT OF TAX AND REVENUE
TO PROMULGATE LEGISLATIVE RULES.**

§64-7-1. Tax commissioner.

§64-7-2. Insurance commissioner.

§64-7-3. Alcohol beverage control commissioner.

§64-7-4. Banking commissioner.

§64-7-5. Racing commission.

§64-7-1. Tax commissioner.

- 1 (a) The legislative rule filed in the state register on the
- 2 eleventh day of July, two thousand, under the authority of
- 3 section five, article one-c, chapter eleven of this code, relat-
- 4 ing to the tax commissioner (valuation of public utility prop-

5 erty for ad valorem property tax purposes, 110 CSR 1M), is
6 authorized.

7 (b) The legislative rule filed in the state register on the
8 twenty-fourth day of July, two thousand, under the authority
9 of section one-b, article three, chapter eleven of this code,
10 modified by the tax commissioner to meet the objections of
11 the legislative rule-making review committee and refiled in
12 the state register on the fifteenth day of December, two thou-
13 sand, relating to the tax commissioner (valuation of percent-
14 age of completion of improvements and infrastructure devel-
15 opment in a recorded plan or plat, 110 CSR 4), is authorized.

16 (c) The legislative rule filed in the state register on the
17 thirty-first day of August, two thousand, under the authority
18 of section twenty-three, article twenty, chapter forty-seven of
19 this code, modified by the tax commissioner to meet the ob-
20 jections of the legislative rule-making review committee and
21 refiled in the state register on the twenty-seventh day of Oc-
22 tober, two thousand, relating to the tax commissioner (bingo,
23 110 CSR 16), is authorized.

24 (d) The legislative rule filed in the state register on the
25 twenty-fourth day of July, two thousand, under the authority
26 of section five, article ten, chapter eleven of this code, modi-
27 fied by the tax commissioner to meet the objections of the
28 legislative rule-making review committee and refiled in the
29 state register on the twentieth day of September, two thou-
30 sand, relating to the tax commissioner (cigarette excise tax,
31 110 CSR 17), is authorized.

32 (e) The legislative rule filed in the state register on the
33 thirty-first day of August, two thousand, under the authority
34 of section twenty-one, article twenty, chapter forty-seven of
35 this code, modified by the tax commissioner to meet the ob-
36 jections of the legislative rule-making review committee and
37 refiled in the state register on the twenty-seventh day of Oc-

38 tober, two thousand, relating to the tax commissioner (chari-
39 table raffles, 110 CSR 37), is authorized.

40 (f) The legislative rule filed in the state register on the
41 eighteenth day of August, two thousand, under the authority
42 of section five, article ten, chapter eleven of this code, modi-
43 fied by the tax commissioner to meet the objections of the
44 legislative rule-making review committee and refiled in the
45 state register on the twentieth day of September, two thou-
46 sand, relating to the tax commissioner (exchange of informa-
47 tion agreement between the state tax division and the alcohol
48 beverage control commission, 110 CSR 50B), is authorized.

§64-7-2. Insurance commissioner.

1 (a) The legislative rule filed in the state register on the
2 first day of October, two thousand, authorized by section
3 three, article fifteen-b, chapter thirty-three of this code, relat-
4 ing to the insurance commissioner (standards for uniform
5 health care administration, 114 CSR 16), is authorized.

6 (b) The legislative rule filed in the state register on the
7 first day of September, two thousand, authorized under the
8 authority of section ten, article two, chapter thirty-three of
9 this code, modified by the insurance commissioner to meet
10 the objections of the legislative rule-making review commit-
11 tee and refiled in the state register on the seventeenth day of
12 November, two thousand, relating to the insurance commis-
13 sioner (examiners' compensation, qualifications and classifi-
14 cation, 114 CSR 15), is authorized.

15 (c) The legislative rule filed in the state register on the
16 first day of September, two thousand, authorized by section
17 ten, article two, chapter thirty-three of this code, modified by
18 the insurance commissioner to meet the objections of the
19 legislative rule-making review committee and refiled in the
20 state register on the seventeenth day of November, two thou-

21 sand, relating to the insurance commissioner (Medicare sup-
22 plement insurance, 114 CSR 24), is authorized.

23 (d) The legislative rule filed in the state register on the
24 first day of September, two thousand, authorized under the
25 authority of section ten, article two, chapter thirty-three of
26 this code, modified by the insurance commissioner to meet
27 the objections of the legislative rule-making review commit-
28 tee and refiled in the state register on the seventeenth day of
29 November, two thousand, relating to the insurance commis-
30 sioner (AIDS, 114 CSR 27), is authorized with the following
31 amendment:

32 "On page six of the rule, subsection 5.9, by striking sub-
33 division 5.9 in its entirety and inserting in lieu thereof, the
34 following:

35 '5.9. The testing is required to be administered on a non-
36 discriminatory basis for all individuals in the same underwrit-
37 ing class. No proposed insured may be denied coverage or
38 rated a substandard risk on the basis of HIV testing unless
39 acceptable testing protocol is followed. The insurer may at its
40 option use a urine HIV test as an initial screening device;
41 provided that if the urine test yields a negative result for the
42 purpose of HIV antibodies then HIV blood or OMT testing
43 may be required by the insurer. The proposed insured may
44 not be denied insurance coverage or rated a substandard risk
45 on the basis of a positive urine HIV test alone, including the
46 use of FDA-licensed tests. An applicant may not be denied
47 coverage on the basis of AIDS related testing unless:

48 a. An initial enzyme linked immunosorbent assay
49 (ELISA) test is administered to the proposed insured, and it
50 indicates the presence of HIV antibodies,

51 b. The initially reactive specimen is retested by ELISA in
52 duplicate and at least one of the repeat tests is reactive. The

53 specimen considered repeatedly reactive, is examined in a
54 Western blot test to confirm the ELISA test results; and

55 c. A Western blot test is positive.”

56 If an initial ELISA test is negative, or both repeat-dupli-
57 cate tests are negative, the testing ceases and the proposed
58 insured cannot be denied coverage based on AIDS-related
59 testing. If the initial and at least one of the repeat-duplicate
60 LISA tests is positive but the Western blot test is negative,
61 for purposes of insurability, the results are negative.

62 (e) The legislative rule filed in the state register on the
63 first day of September, two thousand, authorized by section
64 ten, article two, chapter thirty-three of this code, modified by
65 the insurance commissioner to meet the objections of the
66 legislative rule-making review committee and refiled in the
67 state register on the seventeenth day of November, two thou-
68 sand, relating to the insurance commissioner (continuing
69 education for insurance agents, 114 CSR 42), is authorized.

§64-7-3. Alcohol beverage control commissioner.

1 (a) The legislative rule filed in the state register on the
2 twenty-second day of February, two thousand, authorized
3 under the authority of section six, article three-a, chapter
4 sixty of this code, modified by the alcohol beverage control
5 commissioner to meet the objections of the legislative rule-
6 making review committee and refiled in the state register on
7 the twenty-ninth day of January, two thousand one, relating
8 to the alcohol beverage control commissioner (licensing of
9 retail liquor stores, 175 CSR 5), is authorized. .

10 (b) The legislative rule filed in the state register on the
11 first day of September, two thousand, authorized under the
12 authority of section five, article nine, chapter sixty of this
13 code, modified by the alcohol beverage control commissioner

14 to meet the objections of the legislative rule-making review
15 committee and refiled in the state register on the twenty-first
16 day of February, two thousand one, relating to the alcohol
17 beverage control commissioner (cigarettes produced for ex-
18 port; imported cigarettes, 175 CSR 8), is authorized.

19 (c) The legislative rule filed in the state register on the
20 first day of September, two thousand, authorized under the
21 authority of section eight, article nine-a, chapter sixteen of
22 this code, modified by the alcohol beverage control commis-
23 sioner to meet the objections of the legislative rule-making
24 review committee and refiled in the state register on the
25 twenty-first day of February, two thousand one, relating to
26 the alcohol beverage control commissioner (prohibiting the
27 sale of tobacco products in vending machines, 175 CSR 9), is
28 authorized.

§64-7-4. Banking commissioner.

1 The legislative rule filed in the state register on the thirti-
2 eth day of August, two thousand, under the authority of sec-
3 tion twenty-six, article four, chapter thirty-one-a of this code,
4 modified by the commissioner of banking to meet the objec-
5 tions of the legislative rule-making review committee and
6 refiled in the state register on the twenty-sixth day of Octo-
7 ber, two thousand, relating to the commissioner of banking
8 (legal lending limit, 106 CSR 9), is authorized.

§64-7-5. Racing commission.

1 The legislative rule filed in the state register on the
2 twenty-second day of August, two thousand, under the au-
3 thority of section six, article twenty-three, chapter nineteen of
4 this code, modified by the racing commission to meet the
5 objections of the legislative rule-making review committee
6 and refiled in the state register on the seventeenth day of
7 October, two thousand, relating to the racing commission

8 (thoroughbred racing, 178 CSR 1), is authorized, with the
9 amendment set forth below:

10 On page one, section 178-1-2, beginning on line eleven,
11 by striking out section 178-1-2.1 in its entirety and inserting
12 in lieu thereof a new section 178-1-2.1 as follows:

13 “2.1. “Accredited thoroughbred horse” means a horse
14 that is:

15 2.1.1. foaled in West Virginia; or

16 2.1.2. sired by an accredited West Virginia sire.”.

17 And,

18 On page thirty-one, section 178-1-31.2, line twenty-one,
19 following the words “Racing Commission” and the period,
20 by striking out the words “All moneys won by a horse shall
21 be forfeited and redistributed when the horse is administrated
22 to as described in this section”, and inserting in lieu thereof
23 the words “All moneys won by a horse found to have been
24 administered to as described in this section shall be forfeited
25 and redistributed.”.

CHAPTER 188

**(Com. Sub. for H. B. 2685 — By Delegates Mahan,
Wills, Cann, Kominar, Faircloth and Riggs)**

[Passed April 12, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article eight, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, 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 aeronautics commission to promulgate a legislative rule relating to matters pertaining to aeronautics in the state of West Virginia; authorizing the division of highways to promulgate a legislative rule relating to the transportation of hazardous wastes upon the roads and highways; authorizing the division of highways to promulgate a legislative rule relating to the use of state road rights-of-way and areas adjacent thereto; authorizing the division of highways to promulgate a legislative rule relating to waste tire remediation/ environmental clean-up; authorizing the division of motor vehicles to promulgate a legislative rule relating to the examination and issuance of driver's licenses; authorizing the division of motor vehicles legislative rule relating to the denial, suspension, revocation or nonrenewal of driving privileges; and 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.

Be it enacted by the Legislature of West Virginia:

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

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

§64-8-1. Aeronautics commission.

§64-8-2. Division of highways.

§64-8-3. Division of motor vehicles.

§64-8-1. Aeronautics commission.

1 The legislative rule filed in the state register on the first day
2 of September, two thousand, authorized under the authority of
3 section three, article two-a, chapter twenty-nine of this code,
4 relating to the aeronautics commission (matters pertaining to
5 aeronautics in the state of West Virginia, 171 CSR 1), is
6 authorized.

§64-8-2. Division of highways.

1 (a) The legislative rule filed in the state register on the
2 twenty-eighth day of August, two thousand, under the authority
3 of section seven, article eighteen, chapter twenty-two of this
4 code, relating to the division of highways (transportation of
5 hazardous wastes upon the roads and highways, 157 CSR 7), is
6 authorized.

7 (b) The legislative rule filed in the state register on the
8 twenty-third day of August, two thousand, authorized under the
9 authority of section eight, article two-a, chapter seventeen of
10 this code, modified by the division of highways to meet the
11 objections of the legislative rule-making review committee and
12 refiled in the state register on the thirtieth day of October, two
13 thousand, relating to the division of highways (use of state road

14 rights-of-way and areas adjacent thereto, 157 CSR 6), is
15 authorized, with the following amendment:

16 On page 10, subsection 3.8 after the words “Right of Way”
17 by adding the words “dated July 1, 1995, and made a part of
18 this rule”.

19 (c) The legislative rule filed in the state register on the
20 eighteenth day of August, two thousand, authorized under the
21 authority of section four, article twenty-four, chapter seventeen
22 of this code, modified by the division of highways to meet the
23 objections of the legislative rule-making review committee and
24 refiled in the state register on the thirtieth day of October, two
25 thousand, relating to the division of highways (waste tire
26 remediation/environmental clean-up, 157 CSR 8), is authorized.

§64-8-3. Division of motor vehicles.

1 (a) The legislative rule filed in the state register on the
2 twenty-first day of August, two thousand, authorized under the
3 authority of section nine, article two, chapter seventeen-a of this
4 code, modified by the division of motor vehicles to meet the
5 objections of the legislative rule-making review committee and
6 refiled in the state register on the twenty-first day of September,
7 two thousand, relating to the division of motor vehicles
8 (examination and issuance of driver’s licenses, 91 CSR 4), is
9 authorized.

10 (b) The legislative rule filed in the state register on the
11 thirtieth day of August, two thousand, authorized under the
12 authority of section nine, article two, chapter seventeen-a of this
13 code, modified by the division of motor vehicles to meet the
14 objections of the legislative rule-making review committee and
15 refiled in the state register on the second day of November, two
16 thousand, relating to the division of motor vehicles (denial,
17 suspension, revocation or nonrenewal of driving privileges, 91
18 CSR 5), is authorized.

19 (c) The legislative rule filed in the state register on the
20 twenty-fifth day of July, two thousand, authorized under the
21 authority of section nine, article two, chapter seventeen-a of this
22 code, modified by the division of motor vehicles to meet the
23 objections of the legislative rule-making review committee and
24 refiled in the state register on the eighteenth day of September,
25 two thousand, relating to the division of motor vehicles (motor
26 vehicle dealers, wrecker/dismantler/ rebuilders and license
27 services, automobile auctions, vehicle leasing companies, daily
28 passenger rental car businesses and administrative due process,
29 91 CSR 6), is authorized.

CHAPTER 189

**(Com. Sub. for S. B. 299 — By Senators Ross,
Anderson, Minard, Snyder, Unger and Minear)**

[Passed April 13, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article nine, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; continuing rules previously promulgated by state agencies and boards; legislative mandate or authorization for the promulgation of certain legislative rules; 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; disallowing and not authorizing the board of acupuncturists to promulgate a legislative rule relating to disciplinary and complaint procedures for acupuncturists; authorizing commissioner of agriculture to promulgate a legislative rule relating to traditional cheese production; authorizing commissioner of agriculture to promulgate a legislative rule relating to sale and distribution of commercial fertilizer; authorizing commissioner of agriculture to promulgate a legislative rule relating to fee structure for pesticide control act of 1990; authorizing board of architects to promulgate a legislative rule relating to registration of architects; authorizing board of architects to promulgate a legislative rule relating to fees for registration of architects; authorizing the auditor to promulgate a legislative rule relating to the state auditor's computer and technology program; authorizing auditor to promulgate a legislative rule relating to transaction fee and rate structure; authorizing board of barbers and cosmetologists to promulgate a legislative rule relating to continuing competence; authorizing board of examiners in counseling to promulgate a legislative rule relating to licensing; authorizing board of examiners in counseling to promulgate a legislative rule relating to fees; authorizing board of examiners in counseling to promulgate a legislative rule relating to licensing renewal and continuing professional education requirements; authorizing board of examiners in counseling to promulgate a legislative rule relating to restricted practice licensure for addictions counselors; authorizing board of dental examiners to promulgate a legislative rule relating to fees established by board; authorizing board of licensed dietitians to promulgate a legislative rule relating to continuing professional education requirements; authorizing board of licensed dietitians to promulgate a legislative rule relating to licensure and renewal requirements; authorizing board of licensed dietitians to promulgate a

legislative rule relating to code of professional ethics; authorizing board of embalmers and funeral home directors to promulgate a legislative rule relating to general provisions; authorizing board of registration for professional engineers to promulgate a legislative rule relating to rules of board; authorizing governor's committee on crime, delinquency and correction to promulgate a legislative rule relating to law-enforcement training standards; authorizing governor's committee on crime, delinquency and correction to promulgate a legislative rule relating to protocol for law-enforcement response to domestic violence; authorizing board of hearing aid dealers to promulgate a legislative rule relating to board; authorizing board of examiners for licensed practical nurses to promulgate a legislative rule relating to development of educational programs in practical nursing; authorizing board of examiners for licensed practical nurses to promulgate a legislative rule relating to policies regulating licensure of practical nurses; authorizing board of examiners for licensed practical nurses to promulgate a legislative rule relating to legal standards of nursing practice for licensed practical nurses; authorizing board of examiners for licensed practical nurses to promulgate a legislative rule relating to continuing competence; authorizing board of medicine to promulgate a legislative rule relating to licensing, disciplinary and complaint procedures for physicians and podiatrists; authorizing board of medicine to promulgate a legislative rule relating to licensure, disciplinary and complaint procedures for physician assistants; authorizing board of optometry to promulgate a legislative rule relating to board; authorizing board of osteopathy to promulgate a legislative rule relating to licensing procedures for osteopathic physicians; authorizing board of pharmacy to promulgate a legislative rule relating to rules of board for uniform controlled substances act; authorizing radiologic technology board of examiners to promulgate a legislative rule relating to board; authorizing board of examiners for registered professional nurses to promulgate a legislative rule relating to disciplinary action;

authorizing secretary of state to promulgate a legislative rule relating to agencies designated to provide voter registration services; authorizing board of examiners to promulgate a legislative rule for speech-language pathologists and audiologists; and authorizing board of veterinary medicine to promulgate a legislative rule relating to schedule of fees.

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. Board of acupuncturists.
- §64-9-2. Commissioner of agriculture.
- §64-9-3. Board of architects.
- §64-9-4. Auditor.
- §64-9-5. Board of barbers and cosmetologists.
- §64-9-6. Board of examiners in counseling.
- §64-9-7. Board of dental examiners.
- §64-9-8. Board of licensed dietitians.
- §64-9-9. Board of embalmers and funeral home directors.
- §64-9-10. Board of registration for professional engineers.
- §64-9-11. Governor's committee on crime, delinquency and correction.
- §64-9-12. Board of hearing aid dealers.
- §64-9-13. Board of licensed practical nurses.
- §64-9-14. Board of medicine.
- §64-9-15. Board of optometry.
- §64-9-16. Board of osteopathy.
- §64-9-17. Board of pharmacy.
- §64-9-18. Radiologic technology board of examiners.
- §64-9-19. Board of examiners of registered professional nurses.
- §64-9-20. Secretary of state.
- §64-9-21. Board of examiners for speech-language pathology and audiology.
- §64-9-22. Board of veterinary medicine.

§64-9-1. Board of acupuncturists.

1 The legislative rule filed in the state register on the third
2 day of August, one thousand nine hundred ninety-eight,
3 authorized under the authority of section seven, article thirty-
4 six, chapter thirty of this code, modified by the board to meet
5 the objections of the legislative rule-making review committee,
6 refiled in the state register on the eighth day of January, one
7 thousand nine hundred ninety-nine, and effective the twenty-
8 first day of May, one thousand nine hundred ninety-nine,
9 relating to board of acupuncturists (disciplinary and complaint
10 procedures, 32 CSR 7), is disapproved and not authorized.

§64-9-2. Commissioner of agriculture.

1 (a) The legislative rule filed in the state register on the
2 twenty-seventh day of December, one thousand nine hundred
3 ninety-nine, authorized under the authority of section three,
4 article eleven-d, chapter nineteen of this code, modified by the
5 commissioner of agriculture to meet the objections of the
6 legislative rule-making review committee and refiled in the
7 state register on the fourth day of May, two thousand, relating
8 to the commissioner of agriculture (traditional cheese produc-
9 tion, 61 CSR 4), is authorized.

10 (b) The legislative rule filed in the state register on the
11 fourth day of August, two thousand, authorized under the
12 authority of section twelve, article fifteen, chapter nineteen of
13 this code, modified by the commissioner of agriculture to meet
14 the objections of the legislative rule-making review committee
15 and refiled in the state register on the twelfth day of October,
16 two thousand, relating to the commissioner of agriculture (sale
17 and distribution of commercial fertilizer, 61 CSR 6), is autho-
18 rized.

19 (c) The legislative rule filed in the state register on the
20 eighth day of August, two thousand, authorized under the
21 authority of section four, article sixteen-a, chapter nineteen of

22 this code, modified by the commissioner of agriculture to meet
23 the objections of the legislative rule-making review committee
24 and refiled in the state register on the fifteenth day of Septem-
25 ber, two thousand, relating to the commissioner of agriculture
26 (fee structure for the pesticide control act of 1990, 61 CSR 12),
27 is authorized.

§64-9-3. Board of architects.

1 (a) The legislative rule filed in the state register on the
2 thirty-first day of August, two thousand, under the authority of
3 section one, article twelve, chapter thirty of this code, modified
4 by the board of architects to meet the objections of the legisla-
5 tive rule-making review committee and refiled in the state
6 register on the twelfth day of December, two thousand, relating
7 to the board of architects (registration of architects, 2 CSR 1),
8 is authorized.

9 (b) The legislative rule filed in the state register on the
10 thirty-first day of August, two thousand, under the authority of
11 section three, article twelve, chapter thirty of this code, modi-
12 fied by the board of architects to meet the objections of the
13 legislative rule-making review committee and refiled in the
14 state register on the twelfth day of December, two thousand,
15 relating to the board of architects (fees for the registration of
16 architects, 2 CSR 3), is authorized.

§64-9-4. Auditor.

1 (a) The legislative rule filed in the state register on the tenth
2 day of August, two thousand, authorized under the authority of
3 section ten-c, article three, chapter twelve, of this code, relating
4 to the auditor (transaction fee and rate structure, 155 CSR 4), is
5 authorized with the following amendments:

6 On page 1, section 155-4-3, beginning on line 7 of subsec-
7 tion 155-4-3.2, following the word "transaction" and the period,

8 by inserting the following: "The fee shall continue in effect
9 until December 31, 2002."

10 (b) The legislative rule filed in the state register on the sixth
11 day of August, one thousand nine hundred ninety-nine, under
12 the authority of section two, article four-a, chapter twelve of
13 this code, modified by the auditor to meet the objections of the
14 legislative rule-making review committee and refiled in the
15 state register on the eighth day of February, two thousand,
16 relating to the department of administration and the auditor
17 (state auditor's computer and technology donation program,
18 155 CSR 5), is authorized.

§64-9-5. Board of barbers and cosmetologists.

1 The legislative rule filed in the state register on the
2 thirteenth day of June, two thousand, authorized under the
3 authority of section one, article twenty-seven, chapter thirty of
4 this code, modified by the board of barbers and cosmetologists
5 to meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the thirtieth day of
7 November, two thousand, relating to the board of barbers and
8 cosmetologists (continuing competence, 3 CSR 8), is disap-
9 proved.

§64-9-6. Board of examiners in counseling.

1 (a) The legislative rule filed in the state register on the
2 twenty-eighth day of August, two thousand, under the authority
3 of section five, article thirty-one, chapter thirty of this code,
4 modified by the board of examiners in counseling to meet the
5 objections of the legislative rule-making review committee and
6 refiled in the state register on the twenty-fifth day of Septem-
7 ber, two thousand, relating to the board of examiners in
8 counseling (licensing, 27 CSR 1), is authorized.

9 (b) The legislative rule filed in the state register on the
10 twenty-eighth day of August, two thousand, under the authority
11 of section five, article thirty-one, chapter thirty of this code,
12 modified by the board of examiners in counseling to meet the
13 objections of the legislative rule-making review committee and
14 refiled in the state register on the twenty-fifth day of Septem-
15 ber, two thousand, relating to the board of examiners in
16 counseling (fees, 27 CSR 2), is authorized.

17 (c) The legislative rule filed in the state register on the
18 twenty-eighth day of August, two thousand, under the authority
19 of section five, article thirty-one, chapter thirty of this code,
20 modified by the board of examiners in counseling to meet the
21 objections of the legislative rule-making review committee and
22 refiled in the state register on the twenty-fifth day of Septem-
23 ber, two thousand, relating to the board of examiners in
24 counseling (licensing renewal and continuing professional
25 education requirements, 27 CSR 3), is authorized.

26 (d) The legislative rule filed in the state register on the
27 twenty-eighth day of August, two thousand, under the authority
28 of section seven-a, article thirty-one, chapter thirty of this code,
29 modified by the board of examiners in counseling to meet the
30 objections of the legislative rule-making review committee and
31 refiled in the state register on the twenty-fifth day of Septem-
32 ber, two thousand, relating to the board of examiners in
33 counseling (restricted practice licensure for addictions counsel-
34 ors, 27 CSR 4), is authorized.

§64-9-7. Board of dental examiners.

1 The legislative rule filed in the state register on the twenty-
2 sixth day of June, two thousand, authorized under the authority
3 of section six, article one, chapter thirty of this code, relating to
4 the board of dental examiners (fees established by the board, 5
5 CSR 3), is authorized,

6 By striking the rule in its entirety and inserting in lieu
7 thereof, the following:

8 '§5-3-1. General.

9 1.1 Scope- This legislative rule establishes fees for the
10 Board of Dental Examiners.

11 1.2 Authority: §30-1-6 and §30-4-4a

12 1.3 Filing date-

13 1.4 Effective Date-

14 §5-3-2. Schedule of fees for Dentists.

15 2.1 Dental Licensure Application \$50.00

16 2.2 Out of State Dentist - Dental
17 Licensure Application \$100.00

18 2.3 Temporary Permit \$100.00

19 2.4 Dental Intern/Dental
20 Residency Permit \$50.00

21 2.5 Teaching Permit \$100.00

22 2.6 Investigation of Qualification
23 for Temporary, Dental Intern/Dental
24 Residency or Teaching Permits \$50.00

25 2.7 Annual Information & Renewal fee
26 for a Dentist \$125.00

27 §5-3-3. Schedule of fees for Hygienists.

28 3.1 Dental Hygiene Licensure
29 Application \$35.00

30 3.2 Re-examination fee for Dental
31 Hygienist \$10.00

32 3.3 Out of State Dental Hygienist -
33 Dental Hygienist Licensure
34 Application \$50.00

35 3.4 Temporary Permit \$100.00

36 3.5 Teaching Permit \$100.00

37 3.6 Investigation of Qualification
38 for Temporary, Dental Intern/Dental
39 Residency or Teaching Permits \$50.00

40 3.7 Annual Information & Renewal fee

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41		for a Dental Hygienist	\$50.00
42	§5-3-4.	Schedules of fees for Dental Corporations.	
43	4.1	Application to form a Dental	
44		Corporation.	\$200.00
45	4.2	Annual Registration fee for a	
46		Dental Corporation	\$150.00
47	§5-3-5.	Schedule of fees for Specialty	
48		Licensure for Dentists.	
49	5.1.	Dental Specialty Licensure	
50		Application	\$300.00
51	§5-3-6.	Schedule for Miscellaneous fees.	
52	6.2	Verification Of Licensure to	
52		another State	\$10.00'

§64-9-8. Board of licensed dietitians.

1 (a) The legislative rule filed in the state register on the
2 twenty-ninth day of August, two thousand, under the authority
3 of section four, article thirty-five, chapter thirty of this code,
4 modified by the board of licensed dietitians to meet the
5 objections of the legislative rule-making review committee and
6 refiled in the state register on the thirty-first day of October,
7 two thousand, relating to the board of licensed dietitians
8 (continuing professional education requirements, 31 CSR 5), is
9 authorized.

10 (b) The legislative rule filed in the state register on the
11 twenty-ninth day of August, two thousand, under the authority
12 of section four, article thirty-five, chapter thirty of this code,
13 modified by the board of licensed dietitians to meet the
14 objections of the legislative rule-making review committee and
15 refiled in the state register on the thirty-first day of October,
16 two thousand, relating to the board of licensed dietitians
17 (licensure and renewal requirements, 31 CSR 1), is authorized.

18 (c) The legislative rule filed in the state register on the
19 seventh day of August, two thousand, under the authority of
20 section four, article thirty-five, chapter thirty of this code,
21 modified by the board of licensed dietitians to meet the
22 objections of the legislative rule-making review committee and
23 refiled in the state register on the fourth day of October, two
24 thousand, relating to the board of licensed dietitians (code of
25 professional ethics, 31 CSR 2), is authorized.

§64-9-9. Board of embalmers and funeral home directors.

1 The legislative rule filed in the state register on the eigh-
2 teenth day of August, two thousand, under the authority of
3 section three, article six, chapter thirty of this code, modified by
4 the board of embalmers and funeral home directors to meet the
5 objections of the legislative rule-making review committee and
6 refiled in the state register on the twenty-sixth day of February,
7 two thousand one, relating to the board of embalmers and
8 funeral home directors (general provisions, 6 CSR 1), is
9 authorized,

10 "On page two of the rule, section 2.13, following the
11 word 'casket,' by inserting the word 'and';

12 On page ten of the rule, section 16.1, following the words
13 'The applicant is not', by striking the word 'be';

14 On page ten of the rule, section 16.3, following the words
15 'payment of a fee of \$25.00 for each re-issuance', by striking
16 out the remainder of the sentence and inserting in lieu thereof
17 a period;

18 On page ten of the rule, subsection 16.4.2, following the
19 words 'fault for the missed appointment' by striking out the
20 word 'or' and inserting in lieu thereof a period and the words
21 'No fee will be charged'; and in two places in the subsection,
22 following the word 'his' by inserting the words 'or her'.

23 And,

24 On page eleven of the rule, subsection 18.3, following the
25 words 'one such program' by inserting the words 'or other
26 approved program'.

§64-9-10. Board of registration for professional engineers.

1 The legislative rule filed in the state register on the thirtieth
2 day of August, two thousand, under the authority of section
3 nine, article thirteen, chapter thirty of this code, modified by the
4 board of registration for professional engineers to meet the
5 objections of the legislative rule-making review committee and
6 refiled in the state register on the thirtieth day of October, two
7 thousand, relating to the board of registration for professional
8 engineers (rules of the board, 7 CSR 1), is authorized, with the
9 following amendment:

10 On page ten of the rule, after the words 'services in this
11 State', by striking out subsection 4.2 in its entirety;

12 On page nineteen of the rule, after the stricken words 'the
13 first time', by striking the words 'will be granted a request' and
14 inserting in lieu thereof the word 'requests';

15 On page twenty-seven of the rule, subdivision 14.2.b, after
16 the stricken words 'Successful completion of', by inserting the
17 words 'Evidence of completion of'; and,

18 On page thirty-seven of the rule, after the words 'W. Va.
19 Code §47B-3-6 and §31B-13-1305', by striking out subsection
20 16.8 in its entirety.

**§64-9-11. Governor's committee on crime, delinquency and
correction.**

1 (a) The legislative rule filed in the state register on the first
2 day of September, two thousand, authorized under the authority
3 of section three, article twenty-nine, chapter thirty of this code,
4 relating to the governor's committee on crime, delinquency and
5 correction (law-enforcement training standards, 149 CSR 2), is
6 authorized.

7 (b) The legislative rule filed in the state register on the
8 sixteenth day of August, two thousand, authorized under the
9 authority of section nine, article two-a, chapter forty-eight of
10 this code, relating to the governor's committee on crime,
11 delinquency and correction (protocol for law-enforcement
12 response to domestic violence, 149 CSR 3), is authorized.

§64-9-12. Board of hearing aid dealers.

1 The legislative rule filed in the state register on the twenty-
2 eighth day of August, two thousand, under the authority of
3 section three, article twenty-six, chapter thirty of this code,
4 modified by the board of hearing aid dealers to meet the
5 objections of the legislative rule-making review committee and
6 refiled in the state register on the twenty-seventh day of
7 September, two thousand, relating to the board of hearing aid
8 dealers (rule governing the board, 8 CSR 1), is authorized.

§64-9-13. Board of licensed practical nurses.

1 (a) The legislative rule filed in the state register on the
2 twenty-first day of March, two thousand, under the authority of
3 section five, article seven-a, chapter thirty of this code, modi-
4 fied by the board of examiners for licensed practical nurses to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the twenty-eighth
7 day of April, two thousand, relating to the board of examiners
8 for licensed practical nurses (policies and procedures for
9 development and maintenance of educational programs in
10 practical nursing, 10 CSR 1), is authorized.

11 (b) The legislative rule filed in the state register on the
12 twenty-first day of March, two thousand, under the authority of
13 section five, article seven-a, chapter thirty of this code, modi-
14 fied by the board of examiners for licensed practical nurses to
15 meet the objections of the legislative rule-making review
16 committee and refiled in the state register on the twenty-eighth
17 day of April, two thousand, relating to the board of examiners
18 for licensed practical nurses (policies regulating licensure of the
19 licensed practical nurse, 10 CSR 2), is authorized.

20 (c) The legislative rule filed in the state register on the
21 twenty-first day of March, two thousand, under the authority of
22 section five, article seven-a, chapter thirty of this code, modi-
23 fied by the board of examiners for licensed practical nurses to
24 meet the objections of the legislative rule-making review
25 committee and refiled in the state register on the twenty-eighth
26 day of April, two thousand, relating to the board of examiners
27 for licensed practical nurses (legal standards of nursing practice
28 for the licensed practical nurse, 10 CSR 3), is authorized.

29 (d) The legislative rule filed in the state register on the
30 twenty-first day of March, two thousand, under the authority of
31 section five, article seven-a, chapter thirty of this code, modi-
32 fied by the board of examiners for licensed practical nurses to
33 meet the objections of the legislative rule-making review
34 committee and refiled in the state register on the twenty-eighth
35 day of April, two thousand, relating to the board of examiners
36 for licensed practical nurses (continuing competence, 10 CSR
37 6), is authorized.

§64-9-14. Board of medicine.

1 (a) The legislative rule filed in the state register on the
2 thirty-first day of July, two thousand, authorized under the
3 authority of section seven, article three, chapter thirty of this
4 code, modified by the board of medicine to meet the objections

5 of the legislative rule-making review committee and refiled in
6 the state register on the thirteenth day of February, two thou-
7 sand one, relating to the board of medicine (licensing, disciplin-
8 ary and complaint procedures: Physicians and podiatrists, 11
9 CSR 1A), is authorized.

10 (b) The legislative rule filed in the state register on the
11 thirty-first day of July, two thousand, authorized under the
12 authority of section eight, article one, chapter thirty of this
13 code, modified by the board of medicine to meet the objections
14 of the legislative rule-making review committee and refiled in
15 the state register on the twenty-sixth day of February, two
16 thousand one, relating to the board of medicine (licensure,
17 disciplinary and complaint procedures, continuing education,
18 physician assistant, 11 CSR 1B), is authorized.

§64-9-15. Board of optometry.

1 The legislative rule filed in the state register on the fifteenth
2 day of August, two thousand, under the authority of section
3 three, article eight, chapter thirty of this code, modified by the
4 board of optometry to meet the objections of the legislative
5 rule-making review committee and refiled in the state register
6 on the twenty-seventh day of November, two thousand, relating
7 to the board of optometry (rules of the board, 14 CSR 1), is
8 authorized.

§64-9-16. Board of osteopathy.

1 The legislative rule filed in the state register on the seventh
2 day of August, two thousand, under the authority of section
3 four, article one, chapter thirty of this code, modified by the
4 board of osteopathy to meet the objections of the legislative
5 rule-making review committee and refiled in the state register
6 on the twenty-second day of September, two thousand, relating
7 to the board of osteopathy (licensing procedures, osteopathic
8 physicians, 24 CSR 1), is authorized.

§64-9-17. Board of pharmacy.

1 The legislative rule filed in the state register on the eighth-
2 teenth day of August, two thousand, under the authority of
3 section nineteen, article five, chapter thirty of this code,
4 modified by the board of pharmacy to meet the objections of
5 the legislative rule-making review committee and refiled in the
6 state register on the fourth day of January, two thousand one,
7 relating to the board of pharmacy (rules of the board of phar-
8 macy for the uniform controlled substances act, 15 CSR 2), is
9 authorized, with the following amendment:

10 On page one of the rule, section two, following subsection
11 2.1, by inserting a new subsection, designated subsection 2.2,
12 to read 'The federal regulations are available on the internet at
13 www.access.gpo.gov/nara/cfr/waisidx_00/21cfrv9_00.html.'

§64-9-18. Radiologic technology board of examiners.

1 The legislative rule filed in the state register on the thirty-
2 first day of August, two thousand, under the authority of section
3 five, article twenty-three, chapter thirty of this code, modified
4 by the board of examiners of radiologic technology to meet the
5 objections of the legislative rule-making review committee and
6 refiled in the state register on the fifth day of February, two
7 thousand one, relating to the board of examiners of radiologic
8 technology (rules of the board, 18 CSR 1), is authorized.

§64-9-19. Board of examiners of registered professional nurses.

1 The legislative rule filed in the state register on the third
2 day of August, two thousand, authorized under the authority of
3 section four, article one, chapter thirty of this code, modified by
4 the board of examiners of registered professional nurses to meet
5 the objections of the legislative rule-making review committee
6 and refiled in the state register on the twenty-first day of
7 February, two thousand one, relating to the board of examiners

8 of registered professional nurses (disciplinary action, 19 CSR
9 9), is authorized.

§64-9-20. Secretary of state.

1 The legislative rule filed in the state register on the four-
2 teenth day of July, two thousand, authorized under the authority
3 of section six, article one-a, chapter three, of this code, relating
4 to the secretary of state (agencies designated to provide voter
5 registration services, 153 CSR 28), is authorized.

**§64-9-21. Board of examiners for speech-language pathology and
audiology.**

1 The legislative rule filed in the state register on the thirty-
2 first day of August, two thousand, under the authority of section
3 ten, article thirty-two, chapter thirty of this code, modified by
4 the board of examiners for speech-language pathology and
5 audiology to meet the objections of the legislative rule-making
6 review committee and refiled in the state register on the twenty-
7 fourth day of January, two thousand one, relating to the board
8 of examiners for speech-language pathology and audiology
9 (licensure of speech-language pathology and audiology, 29
10 CSR 1), is authorized.

§64-9-22. Board of veterinary medicine.

1 The legislative rule filed in the state register on the first day
2 of September, two thousand, authorized under the authority of
3 section four, article ten, chapter thirty of this code, modified by
4 the board of veterinary medicine to meet the objections of the
5 legislative rule-making review committee and refiled in the
6 state register on the nineteenth day of December, two thousand,
7 relating to the board of veterinary medicine (schedule of fees,
8 26 CSR 6), is authorized.

CHAPTER 190

**(Com. Sub. for H. B. 2691 — By Delegates Mahan,
Wills, Cann, Kominar, Faircloth and Riggs)**

[Passed April 12, 2001; 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 economic development authority to promulgate a legislative rule relating to the general administration of the West Virginia capital company act and establishment of the application procedures to implement the act; authorizing the division of natural resources to promulgate a legislative rule relating to special projects and grants for West Virginia state parks, state forests and state wildlife management areas under the division; authorizing the division of natural resources to promulgate a legislative rule relating to defining the terms to be used concerning all hunting and trapping rules;

authorizing the division of natural resources to promulgate a legislative rule relating to general hunting; authorizing the division of natural resources to promulgate a legislative rule relating to special fishing; authorizing the division of labor to promulgate a legislative rule relating to the crane operator certification act; and authorizing the division of labor to promulgate a legislative rule relating to the crane operator certification act-practical examination.

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 THE BUREAU OF COMMERCE TO PROMULGATE LEGISLATIVE RULES..

§64-10-1. Economic development authority.

§64-10-2. Division of natural resources.

§64-10-3. Division of labor.

§64-10-1. Economic development authority.

1 The legislative rule filed in the state register on the thirty-
2 first day August, two thousand, under the authority of section
3 five, article one, chapter five-e of this code, relating to the
4 economic development authority (general administration of the
5 West Virginia capital company act; establishment of the
6 application procedures to implement the act, 117 CSR 1), is
7 authorized.

§64-10-2. Division of natural resources.

1 (a) The legislative rule filed in the state register on the
2 thirtieth day of August, two thousand, authorized under the
3 authority of section two, article five, chapter twenty of this
4 code, modified by the division of natural resources to meet the
5 objections of the legislative rule-making review committee and
6 refiled in the state register on the eighteenth day of October,

7 two thousand, relating to the division of natural resources
8 (special projects and grants for West Virginia state parks, state
9 forests and state wildlife management areas under the division,
10 58 CSR 34), is authorized, with the following amendment:

11 “On page 1 subsection 2.1, following the words ‘park,
12 forest’ by inserting a comma and the words ‘wildlife manage-
13 ment’.”

14 (b) The legislative rule filed in the state register on the first
15 day of September, two thousand, authorized under the authority
16 of section seven, article one, chapter twenty of this code,
17 modified by the division of natural resources to meet the
18 objections of the legislative rule-making review committee and
19 refiled in the state register on the twenty-fifth day of October,
20 two thousand, relating to the division of natural resources
21 (defining the terms to be used concerning all hunting and
22 trapping rules, 58 CSR 46), is authorized.

23 (c) The legislative rule filed in the state register on the first
24 day of September, two thousand, authorized under the authority
25 of section seven, article one, chapter twenty of this code,
26 modified by the division of natural resources to meet the
27 objections of the legislative rule-making review committee and
28 refiled in the state register on the twenty-fifth day of October,
29 two thousand, relating to the division of natural resources
30 (general hunting, 58 CSR 49), is authorized.

31 (d) The legislative rule filed in the state register on the
32 twenty-fifth of August, two thousand, authorized under the
33 authority of section seven, article one, chapter twenty of this
34 code, modified by the division of natural resources to meet the
35 objections of the legislative rule-making review committee and
36 refiled in the state register on the twenty-second day of Septem-
37 ber, two thousand, relating to the division of natural resources
38 (special fishing, 58 CSR 61), is authorized, with the following
39 amendment:

40 On page 4, subdivision 4.1.10 by striking out the words
41 “Kanawha State Forest Pond” and inserting in lieu thereof the
42 words “Ellison Pond”.

§64-10-3. Division of labor.

1 (a) The legislative rule filed in the state register on the first
2 day of September, two thousand, authorized under the authority
3 of section three, article three-d, chapter twenty-one of this code,
4 modified by the division of labor to meet the objections of the
5 legislative rule-making review committee and refiled in the
6 state register on the twenty-first day of December, two thou-
7 sand, relating to the division of labor (crane operator certifica-
8 tion act, 42 CSR 24), is authorized.

9 (b) The legislative rule filed in the state register on the first
10 day of September, two thousand, authorized under the authority
11 of section three, article three-d, chapter twenty-one of this code,
12 modified by the division of labor to meet the objections of the
13 legislative rule-making review committee and refiled in the
14 state register on the twenty-first day of December, two thou-
15 sand, relating to the division of labor (crane operator certifica-
16 tion act-practical examination, 42 CSR 25), is authorized.

CHAPTER 191

(S. B. 700 — By Senator Tomblin, Mr. President)

[Passed April 14, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article seven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the Social Security Act as it relates

to members of the Legislature and part-time employees of the Legislature.

Be it enacted by the Legislature of West Virginia:

That section two, article seven, 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 7. SOCIAL SECURITY AGENCY.

§5-7-2. Definitions.

1 For the purposes of this article:

2 (a) The term “wages” means all remuneration for employ-
3 ment as defined herein, including the cash value of all remuner-
4 ation paid in any medium other than cash, except that the term
5 may not include that part of the remuneration which, even if it
6 were paid for “employment” within the meaning of the Federal
7 Insurance Contributions Act, would not constitute “wages”
8 within the meaning of that act.

9 (b) The term “employment” means any service performed
10 by an employee in the employ of the state, or any political
11 subdivision thereof, or any instrumentality of either, for the
12 employer, except service which in the absence of an agreement
13 entered into under this article would constitute “employment”
14 as defined in section two hundred nine of the Social Security
15 Act.

16 (c) The term “employee” includes an officer of the state, or
17 one of its political subdivisions or instrumentalities, or mem-
18 bers of the state Legislature and part-time employees of the
19 state Legislature.

20 (d) The term “state agency” means the state auditor.

21 (e) The term “federal agency” means in each case a federal
22 officer, department or agency as is charged on behalf of the
23 federal government, by or under the applicable federal law,
24 with the particular federal functions referred to in this article in
25 connection with that term.

26 (f) The term “political subdivision” includes any county,
27 municipal corporation or school district.

28 (g) The term “instrumentality”, when referring to an
29 instrumentality of a state or political subdivision, includes only
30 a legal entity which is separate and distinct from the state or the
31 subdivision and whose employees are not by virtue of their
32 relation to the entity employees of the state or such subdivi-
33 sions.

34 (h) The term “applicable federal law” refers to provisions
35 of federal law, including federal regulations and requirements
36 issued pursuant thereto, if and when enacted, as provided for
37 extending the benefits of Title II of the Social Security Act to
38 employees of states, political subdivisions and their instrumen-
39 talities.

40 (i) The term “Social Security Act” means the act of
41 Congress approved the fourteenth day of August, one thousand
42 nine hundred thirty-five, chapter five hundred thirty-one, forty-
43 nine statutes six hundred twenty, officially cited as the “Social
44 Security Act”, as the act has been and may, from time to time,
45 be amended.

46 (j) The term “Federal Insurance Contributions Act” means
47 subchapter A, chapter nine of the Federal Internal Revenue
48 Code as the code has been and may, from time to time, be
49 amended.

CHAPTER 192

(Com. Sub. for S. B. 69 — By Senator Wooton)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article fourteen, relating to creating a self-service storage lien act; imposing lien; providing method of enforcing lien; owners duties to lienholders; late fees; and rights and duties of occupant and owner.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. SELF-SERVICE STORAGE LIEN ACT.

- §38-14-1. Short title.
- §38-14-2. Definitions.
- §38-14-3. Self-service storage lien.
- §38-14-4. Late fees.
- §38-14-5. Enforcement of self-service storage lien.
- §38-14-6. Other legal remedies may be used.
- §38-14-7. Duties; care, custody and control of property.
- §38-14-8. Savings clause.
- §38-14-9. Effective date and application of article.

§38-14-1. Short title.

- 1 This article may be known as the “Self-Service Storage
- 2 Lien Act”.

§38-14-2. Definitions.

1 As used in this article, unless the context clearly requires
2 otherwise:

3 (1) "Default" means the failure to perform on time any
4 obligation or duty set forth in the rental agreement or this
5 article;

6 (2) "Late fee" means a fee or charge assessed for a default;

7 (3) "Leased space" means the individual storage space at
8 the self-service facility which is leased or rented to an occupant
9 pursuant to a rental agreement;

10 (4) "Occupant" means a person entitled to the use of a
11 leased space at a self-service storage facility under a rental
12 agreement, or the person's sublessee, successor or assign;

13 (5) "Owner" means the owner, operator, lessor or sublessor
14 of a self-service storage facility or the person's agent or any
15 other person authorized to manage the facility or to receive rent
16 from any occupant under a rental agreement. The owner of a
17 self-service storage facility is not a warehouseman as defined
18 in section one hundred two, article seven, chapter forty-six of
19 this code unless the owner issues a warehouse receipt, bill of
20 lading or other document of title for the personal property
21 stored, in which event the owner and the occupant are subject
22 to the provisions of article seven, chapter forty-six of this code
23 dealing with warehousemen;

24 (6) "Personal property" means movable property not
25 affixed to land and includes, but is not limited to, goods, wares,
26 merchandise, motor vehicles and household items and furnish-
27 ings;

28 (7) "Primary address" means that address provided by the
29 occupant in the rental agreement or the address provided by the
30 occupant in a subsequent notice of a change of address;

31 (8) "Rental agreement" means any agreement or lease that
32 establishes or modifies the terms, conditions or rules concern-
33 ing the lawful and reasonable use and occupancy of a
34 self-service storage facility;

35 (9) "Secondary address" means any address provided on the
36 rental agreement and is in addition to the primary address;

37 (10) "Self-service storage facility" means any real property
38 used for renting or leasing individual storage spaces, other than
39 storage spaces which are leased or rented as an incident to the
40 lease or rental of residential property or dwelling units, to
41 which the occupants have access for storing or removing their
42 personal property; and

43 (11) "Self-service storage lien" means a lien imposed on the
44 personal property of an occupant by the owner of a self-service
45 storage facility.

§38-14-3. Self-service storage lien.

1 (a) The owner has a self-service storage lien on all personal
2 property stored within each leased space for agreed rent, labor
3 or other charges and for expenses reasonably incurred in its sale
4 or destruction pursuant to this article. The self-service storage
5 lien attaches as of the date the personal property is stored within
6 each leased space and remains a lien until the occupant has
7 satisfied the terms of the rental agreement.

8 (b) In the case of any motor vehicle or watercraft which is
9 subject to a lien previously recorded on the certificate of title,
10 the owner has a self-service storage lien on the vehicle or

11 watercraft so long as the motor vehicle or watercraft remains
12 stored within the leased space.

13 (c) The rental agreement must contain:

14 (1) A statement, in bold type, advising the occupant of the
15 existence of the self-service storage lien and that the personal
16 property stored within the leased space may be sold to satisfy
17 the self-service storage lien or destroyed if the value of the
18 property would not reasonably discharge the costs of the sale
19 and self-service storage lien;

20 (2) A space for a secondary address immediately following
21 the space provided for the primary address; and

22 (3) A statement that the occupant may not store hazardous
23 waste or contraband in the leased space.

§38-14-4. Late fees.

1 The owner may charge a late fee not to exceed ten dollars
2 or ten percent of the monthly rental fee, whichever is greater,
3 for each month the occupant defaults for a period of fifteen
4 days or more.

§38-14-5. Enforcement of self-service storage lien.

1 (a) (1) If an occupant is in default under a rental agreement
2 and the owner wishes to enforce the lien, the owner shall notify
3 the occupant of the default in a form as prescribed by subsec-
4 tion (c) of this section. If the default is not cured within sixty
5 days after the service of the notice, the owner may:

6 (A) Proceed to enforce the self-service storage lien by
7 selling the contents of the occupant's unit at public auction, for
8 cash, and apply the proceeds to satisfaction of the self-service

9 storage lien, with the surplus, if any, to be disbursed as pro-
10 vided in this article; or

11 (B) Destroy the personal property if he or she can demon-
12 strate by photographs or other images and affidavit of a
13 knowledgeable and credible person that the personal property
14 lacks a value sufficient to cover the reasonable expense of a
15 public auction plus the amount of the self-service storage lien;

16 (2) In the case of personal property having a fair market
17 value in excess of one thousand dollars and against which a
18 secured party has filed a financing statement in the name of the
19 occupant with the secretary of state or in the office of the clerk
20 of the county commission in the county where the self-service
21 storage facility is located or in the county in West Virginia
22 shown as the last known address of the occupant or if the
23 personal property is a motor vehicle or watercraft required by
24 the laws of this state to be registered and the division of motor
25 vehicles shows a lien on the certificate of title, the owner shall
26 notify the lienholder of record, by certified mail, at the address
27 on the financing statement or certificate of title, of the time and
28 place of the proposed public auction, at least thirty days prior
29 to the auction. At any time prior to the public sale or destruc-
30 tion, a secured party may pay the reasonable fees and costs due
31 to the person possessing the self-service storage lien and take
32 possession of the personal property which is subject to the lien;

33 (3) If a lienholder of record of the personal property cannot
34 be ascertained, the name of "Jane Doe" shall be substituted in
35 the proceedings brought under this article and no written notice
36 is required except as prescribed by subsection (c) of this
37 section. Whenever a motor vehicle or watercraft is sold under
38 the provisions of this article, the division of motor vehicles
39 shall issue a certificate of title and registration to the purchaser
40 upon the purchaser's application containing the serial or motor
41 number of the vehicle or watercraft purchased, together with an

42 affidavit by the person conducting the public auction, evidenc-
43 ing compliance with the provisions of this article.

44 (b) The owner may, without judicial process, deny the
45 occupant access to the personal property stored at the self-
46 service storage facility if the occupant has been in default for
47 fifteen days: *Provided*, That the owner clearly states in the
48 rental agreement that he or she may deny the occupant access
49 to the personal property stored in the rental space after a default
50 lasting fifteen or more days and the owner maintains a conspic-
51 uous sign on the premises of the self-service storage facility
52 stating the name, street address and telephone number of the
53 owner or the owner's designated agent who the occupant may
54 contact to redeem his or her personal property and upon
55 redemption, the occupant or lienholder be permitted access to
56 his or her personal property at a time not later than the close of
57 business on the next following business day.

58 (c) Anytime after the occupant has been in default and
59 before the owner can sell or destroy the occupant's personal
60 property in accordance with the terms of this article, the owner
61 shall send a notice of default, by regular mail, and registered or
62 certified mail, postage prepaid, to the occupant at the occu-
63 pant's last-known primary address and secondary address, if
64 any. The notice of default shall include:

65 (1) An itemized statement of the owner's claim, indicating
66 the charges due on the date of the notice, the date when the
67 charges became due and those charges that will accrue through
68 the date of sale or destruction of the occupant's personal
69 property;

70 (2) A demand for payment of the charges due to the owner
71 with an address where payment can be made;

72 (3) A statement that the contents of the occupant's leased
73 space are subject to the owner's self-service storage lien;

74 (4) A conspicuous statement that unless the claim is paid
75 prior to the enforcement of the self-storage lien:

76 (A) The personal property contained in the occupant's
77 space will be sold at public auction at a specified time and place
78 which may not be less than sixty days from the date of the
79 service; or

80 (B) The personal property contained in the occupant's space
81 will be disposed of at a commercially reasonable cost to the
82 occupant at a specified time and place which may not be less
83 than sixty days from the date of the service; and

84 (d) At any time prior to the public auction or destruction of
85 the personal property pursuant to this section the occupant may
86 pay the full amount necessary to satisfy the self-service storage
87 lien. A lienholder of record may pay an amount not to exceed
88 one hundred seventy-five dollars for incurred rental fees, late
89 fees and safekeeping of the property in addition to an amount
90 not to exceed seventy-five dollars for notice and redeem only
91 the personal property subject to the lien.

92 (e)(1) Any owner who conducts a public auction pursuant
93 to this section may satisfy the self-service storage lien from the
94 proceeds of the public auction and hold the balance, if any, for
95 delivery on demand to the occupant. If an owner complies with
96 the provisions of this article, his or her liability to the occupant
97 is limited to the net proceeds less the amount of the self-service
98 storage lien and costs received at the public auction;

99 (2) If an owner conducts a public auction pursuant to this
100 section, the owner's liability to a lienholder is limited to the
101 proceeds received at the public auction, less the amount of the
102 self-service storage lien and costs. If an owner complies with
103 the provisions of this article, the owner is not liable to a
104 lienholder who fails to claim an interest in the net proceeds
105 within thirty days after the public auction.

106 (f) Any public auction of the personal property shall be held
107 at the self-service storage facility or at the nearest suitable place
108 to where the personal property is held or stored. An advertise-
109 ment shall be published in a newspaper of general circulation
110 in the county or municipality in which the public auction is to
111 be held not less than twenty days prior to the public auction.
112 The advertisement must state the:

113 (1) Fact that it is a public auction;

114 (2) Date, time and location of the public auction;

115 (3) Date, time and location which the property may be
116 inspected; and

117 (4) Form of payment acceptable.

118 (g) A purchaser in good faith of any personal property sold
119 or otherwise disposed of pursuant to this article takes the
120 property free and clear of any rights of persons against whom
121 the lien was valid.

122 (h) Any notice made pursuant to this section is presumed
123 delivered when it is deposited with the United States postal
124 service and properly addressed with postage prepaid.

§38-14-6. Other legal remedies may be used.

1 The provisions of this article do not preempt or limit the
2 owner's use of any additional remedy otherwise allowed by
3 law.

§38-14-7. Duties; care, custody and control of property.

1 (a) The owner shall use reasonable care in maintaining the
2 self-service storage facility for the purposes of storage of
3 personal property and may not offer to sell insurance to the
4 occupant to cover the owner's risk or lack of care.

5 (b) Prior to the sale or destruction of personal property
6 pursuant to this section, the owner shall prepare a detailed
7 inventory of all personal property to be sold or destroyed and
8 shall maintain the inventory listing for a period of two years
9 from the date of the sale or destruction of the property. The
10 occupant shall have access to the inventory listing for the period
11 during which it is maintained by the owner.

12 (c) Unless the rental agreement specifically provides
13 otherwise, the exclusive care, custody and control of all
14 personal property stored in the leased space remains vested in
15 the occupant.

16 (d) An occupant may not use a self-service storage facility
17 for residential purposes.

18 (e) An occupant may not store hazardous waste or contra-
19 band in the leased space. An owner who discovers hazardous
20 waste or contraband in a leased space shall promptly notify the
21 appropriate law-enforcement agency and is authorized to
22 deliver the hazardous waste or contraband to the appropriate
23 law-enforcement agency.

§38-14-8. Savings clause.

1 All rental agreements entered into prior to the first day of
2 July, two thousand one, which have not been extended or
3 renewed after that date remain valid and may be enforced or
4 terminated in accordance with their terms or as permitted by
5 any other statute or law of this state.

§38-14-9. Effective date and application of article.

1 The provisions of this article apply to all rental agreements
2 entered into or extended or renewed after the first day of July,
3 two thousand one.

CHAPTER 193

(Com. Sub. for H. B. 2222 — By Delegates Campbell and Mahan)

[Passed March 28, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section twenty-eight, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section three-ff, article one, chapter seven of said code; to amend article fourteen, chapter seventeen-c of said code by adding thereto a new section, designated section fourteen; to amend and reenact sections twenty-four and twenty-six, article seven, chapter twenty of said code; and to amend and reenact section twenty-three, article four, chapter twenty-two-c, all relating to litter generally; authorizing county commissions to hire litter control officers; making it a crime to throw litter from a motor vehicle or other conveyance; assessing three points against driver's license; creating presumption of responsibility when more than one person is in vehicle; requiring division of motor vehicles promulgate a rule; defining terms; making it a misdemeanor to litter on public or private property or waters of the state; creating fines and community service penalties for certain violations; establishing jail sentence for certain violations; providing that landowners, renters and lessees are not restricted in lawful use of property; creating exceptions for permitted industrial discharges; prohibiting litter near waters of the state and providing exception; providing for verification of community service litter cleanup; establishing presumption of intent if litter is thrown from motor vehicle, boat, airplane or other conveyance; providing for enforcement; creating presumption of ownership if identifying information found in

litter; creating exemption for logos and trademarks; increasing civil penalties for litter conviction; directing moneys from civil penalties to go to litter control fund and county and regional solid waste authorities; requiring solid waste authorities expend funds for litter prevention, cleanup and enforcement; requiring the division of highways to erect signs throughout the state setting forth the penalties for littering; requiring the division of motor vehicles to provide summary of litter law when registering a motor vehicle or issuing an operator's or chauffeur's license; authorizing certain state agencies and political subdivisions to place litter receptacles in public areas and establishing penalties for failure to do so; and clarifying that solid waste authorities may expend any available funds to operate solid waste facilities, litter control programs and recycling programs.

Be it enacted by the Legislature of West Virginia:

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

Chapter

7. County Commissions and Officers.

17C. Traffic Regulations and Laws of the Road.

20. Natural Resources.

22C. Environmental Resources; Boards, Authorities, Commissions and Compacts.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3ff. Authority of county commission to enact ordinances regulating the repair, alteration, improvement, vacating, closing, removal or demolition of unsafe or unsanitary structures and the clearance and removal of refuse, debris, overgrown vegetation, toxic spills or toxic seepage on private land; authority to create enforcement agency; procedure for complaints; promulgation of rules governing investigation and hearing of complaints; remedies for failure to comply with commission-ordered repairs or alterations; lien and sale of land to recover costs; entry on land to perform repairs and alterations or to satisfy lien; receipt of grants and subsidies.

1 (a) Plenary power and authority are hereby conferred upon
2 every county commission to adopt ordinances regulating the
3 repair, alteration or improvement, or the vacating and closing
4 or removal or demolition, or any combination thereof, of any
5 dwellings or other buildings, except for buildings utilized for
6 farm purposes on land actually being used for farming, unfit for
7 human habitation due to dilapidation, defects increasing the
8 hazard of fire, accidents or other calamities, lack of ventilation,
9 light or sanitary facilities or any other conditions prevailing in
10 any dwelling or building, whether used for human habitation or
11 not, which would cause the dwellings or other buildings to be
12 unsafe, unsanitary, dangerous or detrimental to the public safety
13 or welfare, whether the result of natural or manmade force or
14 effect.

15 (b) Plenary power and authority are hereby conferred upon
16 every county commission to adopt ordinances regulating the
17 removal and cleanup of any accumulation of refuse or debris,
18 overgrown vegetation or toxic spillage or toxic seepage located
19 on private lands which is determined to be unsafe, unsanitary,

20 dangerous or detrimental to the public safety or welfare whether
21 the result of natural or manmade force or effect.

22 (c) The county commission in formally adopting ordinances
23 shall designate an enforcement agency, which shall consist of
24 the county engineer (or other technically qualified county
25 employee or consulting engineer), county health officer or his
26 or her designee, a fire chief from a county fire company, the
27 county litter control officer, if the commission chooses to hire
28 one, and two members at large selected by the county commis-
29 sion to serve two-year terms. The county sheriff shall serve as
30 an ex officio member of the enforcement agency and the county
31 officer charged with enforcing the orders of the county commis-
32 sion under this section.

33 (d) Any ordinance adopted pursuant to the provisions of
34 this section shall provide fair and equitable rules of procedure
35 and any other standards considered necessary to guide the
36 enforcement agency, or its agents, in the investigation of
37 dwelling or building conditions, accumulation of refuse or
38 debris, overgrown vegetation or toxic spillage or toxic seepage,
39 and shall provide for fair and equitable rules of procedure for
40 instituting and conducting hearings in the matters before the
41 county commission. Any entrance upon premises for the
42 purpose of making examinations shall be made in a manner as
43 to cause the least possible inconvenience to the persons in
44 possession.

45 (e) Any county commission adopting ordinances authorized
46 by this section shall hear and determine complaints of the
47 enforcement agency. Complaints shall be initiated by citation
48 issued by the county litter control officer or petition of the
49 county engineer (or other technically qualified county employee
50 or consulting engineer) on behalf of and at the direction of the
51 enforcement agency, but only after that agency has investigated
52 and determined that any dwelling, building, accumulation of

53 refuse or debris, overgrown vegetation or toxic spillage or toxic
54 seepage is unsafe, unsanitary, dangerous or detrimental to the
55 public safety or welfare and should be repaired, altered,
56 improved, vacated, removed, closed, cleaned or demolished.
57 The county commission shall cause the owner or owners of the
58 private land in question to be served with a copy of the com-
59 plaint. Service shall be accomplished in the manner provided in
60 rule four of the West Virginia rules of civil procedure. The
61 complaint shall state the findings and recommendations of the
62 enforcement agency and that unless the owner or owners of the
63 property file with the clerk of the county commission a written
64 request for a hearing within ten days of receipt of the complaint,
65 an order will be issued by the county commission implementing
66 the recommendations of the enforcement agency. If the owner
67 or owners of the property file a request for a hearing, the county
68 commission shall issue an order setting this matter down for
69 hearing within twenty days. Hearings shall be recorded by
70 electronic device or by court reporter. The West Virginia rules
71 of evidence do not apply to the proceedings, but each party has
72 the right to present evidence and examine and cross examine all
73 witnesses. The enforcement agency has the burden of proving
74 its allegation by a preponderance of the evidence and has the
75 duty to go forward with the evidence. At the conclusion of the
76 hearing the county commission shall make findings of fact,
77 determinations and conclusions of law as to whether the
78 dwelling or building: Is unfit for human habitation due to
79 dilapidation; has defects that increase the hazard of fire,
80 accidents or other calamities, lacks ventilation, light or sanitary
81 facilities; or any other conditions prevailing in the dwelling or
82 building, whether used for human habitation or not, and
83 whether the result of natural or manmade force or effect, which
84 would cause such dwelling or other building to be unsafe,
85 unsanitary, dangerous or detrimental to the public safety or
86 welfare; or whether there is an accumulation of refuse or debris;
87 overgrown vegetation; toxic spillage or toxic seepage on private

88 lands which is determined to be unsafe, unsanitary, dangerous
89 or detrimental to the public safety or welfare, whether the result
90 of natural or manmade force or effect. The county commission
91 has authority to order the owner or owners thereof to repair,
92 alter, improve, vacate, remove, close, cleanup or demolish the
93 dwelling or building in question or to remove or cleanup any
94 accumulation of refuse or debris, overgrown vegetation or toxic
95 spillage or toxic seepage within a reasonable time and to
96 impose daily civil monetary penalties on the owner or owners
97 who fail to obey an order. Appeals from the county commission
98 to the circuit court shall be in accordance with the provisions of
99 article three, chapter fifty-eight of this code.

100 (f) Upon the failure of the owner or owners of the private
101 land to perform the ordered duties and obligations as set forth
102 in the order of the county commission, the county commission
103 may advertise for and seek contractors to make the ordered
104 repairs, alterations or improvements, or the ordered demolition,
105 removal or cleanup. The county commission may enter into any
106 contract with any contractor to accomplish the ordered repairs,
107 alterations or improvements, or the ordered demolition, removal
108 or cleanup.

109 (g) A civil proceeding may be brought in circuit court by
110 the county commission against the owner or owners of the
111 private land which is the subject matter of the order of the
112 county commission to subject the private land in question to a
113 lien for the amount of the contractor's costs in making these
114 ordered repairs, alterations or improvements, or ordered
115 demolition, removal or cleanup together with any daily civil
116 monetary penalty imposed and reasonable attorney fees and
117 court costs and to order and decree the sale of the private land
118 in question to satisfy the lien, and to order and decree that the
119 contractor may enter upon the private land in question at any
120 and all times necessary to make improvements, or ordered
121 repairs, alterations or improvements, or ordered demolition,

122 removal or cleanup. In addition, the county commission shall
123 have the authority to institute a civil action in a court of
124 competent jurisdiction against the landowner or other responsi-
125 ble party for all costs incurred by the county with respect to the
126 property and for reasonable attorney fees and court costs
127 incurred in the prosecution of the action.

128 (h) County commissions have the power and authority to
129 receive and accept grants, subsidies, donations and services in
130 kind consistent with the objectives of this section.

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 14. MISCELLANEOUS RULES.

§17C-14-14. Unlawful to litter from motor vehicle; penalty; rule making.

1 (a) It is unlawful for any driver or passenger of a motor
2 vehicle or other conveyance to place, deposit, dump, throw or
3 cause to be placed, deposited, dumped or thrown, any litter
4 from a motor vehicle or other conveyance in or upon any public
5 or private highway, road, street or alley; any private property;
6 any public property; or the waters of the state or within one
7 hundred feet of the waters of this state, except in a proper litter
8 or other solid waste receptacle.

9 (b) For purposes of this section, "litter" means all waste
10 material including, but not limited to, any garbage, refuse,
11 trash, disposable package, container, can, bottle, paper, ashes,
12 cigarette or cigar butt, carcass of any dead animal or any part
13 thereof, or any other offensive or unsightly matter, but not
14 including the wastes of primary processes of mining, logging,
15 sawmilling, farming or manufacturing.

16 (c) In addition to any penalty imposed for littering under
17 the provisions of article seven, chapter twenty of this code, any
18 driver of a motor vehicle or other conveyance convicted of
19 violating this section shall have three points assessed against his
20 or her driver's license.

21 (d) The commissioner shall assess points against the
22 driver's license of any driver of a motor vehicle or other
23 conveyance found guilty of violating this section upon receiv-
24 ing notice from a circuit clerk, magistrate court or municipal
25 court of this state of the conviction. Circuit clerks, magistrate
26 courts and municipal courts of this state shall promptly notify
27 the commissioner of the convictions.

28 (e) When there is more than one occupant in a motor
29 vehicle or other conveyance and it cannot be determined which
30 occupant is responsible for violating this section, the driver
31 shall be presumed to be responsible for the violation.

32 (f) The commissioner of the division of motor vehicles shall
33 propose or amend legislative rules for promulgation, in accor-
34 dance with the provisions of article three, chapter twenty-nine-a
35 of this code, to effectuate the purposes of this section.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-24. Definitions.

§20-7-26. Unlawful disposal of litter; civil and criminal penalty; litter control fund;
evidence; notice violations; litter receptacle placement; penalty; duty
to enforce violations.

§20-7-24. Definitions.

1 As used in sections twenty-five and twenty-six of this
2 article, unless the context requires a different meaning:

3 (a) "Collected for commercial purposes" means taking solid
4 waste for disposal from any person for remuneration regardless
5 of whether or not the person taking the solid waste is a common
6 carrier by motor vehicle governed by article two, chapter
7 twenty-four-a of this code.

8 (b) "Court" means any circuit, magistrate or municipal
9 court.

10 (c) "Litter" means all waste material including, but not
11 limited to, any garbage, refuse, trash, disposable package,
12 container, can, bottle, paper, ashes, cigarette or cigar butt,
13 carcass of any dead animal or any part thereof, or any other
14 offensive or unsightly matter, but not including the wastes of
15 primary processes of mining, logging, sawmilling, farming or
16 manufacturing.

17 (d) "Litter receptacle" means those containers suitable for
18 the depositing of litter at each respective public area designated
19 by the director's rules promulgated pursuant to subdivision
20 eight, subsection (a), section twenty-five of this article.

21 (e) "Public area" means an area outside of a municipality,
22 including public road and highway rights-of-way, parks and
23 recreation areas owned or controlled by this state or any county
24 of this state, or an area held open for unrestricted access by the
25 general public.

26 (f) "Waters of the state" means generally, without limita-
27 tion, natural or artificial lakes, rivers, streams, creeks, branches,
28 brooks, ponds, impounding reservoirs, springs, wells, water-
29 courses and wetlands.

**§20-7-26. Unlawful disposal of litter; civil and criminal penalty;
litter control fund; evidence; notice violations; litter
receptacle placement; penalty; duty to enforce
violations.**

1 (a) (1) No person shall place, deposit, dump, throw or cause
2 to be placed, deposited, dumped or thrown any litter as defined
3 in section twenty-four of this article, in or upon any public or
4 private highway, road, street or alley; any private property; any
5 public property; or the waters of the state or within one hundred
6 feet of the waters of this state, except in a proper litter or other
7 solid waste receptacle.

8 (2) It is unlawful for any person to place, deposit, dump,
9 throw or cause to be placed, deposited, dumped or thrown any
10 litter from a motor vehicle or other conveyance or to perform
11 any act which constitutes a violation of the motor vehicle laws
12 contained in section fourteen, article fourteen, chapter
13 seventeen-c of this code.

14 (3) If any litter is placed, deposited, dumped, discharged,
15 thrown or caused to be placed, deposited, dumped or thrown
16 from a motor vehicle, boat, airplane or other conveyance, it is
17 prima facie evidence that the owner or the operator of the motor
18 vehicle, boat, airplane or other conveyance intended to violate
19 the provisions of this section.

20 (4) Any person who violates the provisions of this section
21 by placing, depositing, dumping or throwing or causing to be
22 placed, deposited, dumped or thrown any litter, not collected for
23 commercial purposes, in an amount not exceeding one hundred
24 pounds in weight or twenty-seven cubic feet in size, is guilty of
25 a misdemeanor. Upon conviction, he or she is subject to a fine
26 of not less than fifty dollars nor more than one thousand dollars,
27 or in the discretion of the court, sentenced to perform commu-
28 nity service by cleaning up litter from any public highway,
29 road, street, alley or any other public park or public property, or
30 waters of the state, as designated by the court, for not less than
31 eight nor more than sixteen hours, or both.

32 (5) Any person who violates the provisions of this section
33 by placing, depositing, dumping or throwing or causing to be
34 placed, deposited, dumped or thrown any litter, not collected for
35 commercial purposes, in an amount greater than one hundred
36 pounds in weight or twenty-seven cubic feet in size, but less
37 than five hundred pounds in weight or two hundred sixteen
38 cubic feet in size is guilty of a misdemeanor. Upon conviction
39 he or she is subject to a fine of not less than five hundred
40 dollars nor more than two thousand dollars, or in the discretion
41 of the court, may be sentenced to perform community service
42 by cleaning up litter from any public highway, road, street,
43 alley or any other public park or public property, or waters of
44 the state, as designated by the court, for not less than sixteen
45 nor more than thirty-two hours, or both.

46 (6) Any person who violates the provisions of this section
47 by placing, depositing, dumping or throwing or causing to be
48 placed, deposited, dumped or thrown any litter in an amount
49 greater than five hundred pounds in weight or two hundred
50 sixteen cubic feet in size or any amount which had been
51 collected for commercial purposes, is guilty of a misdemeanor.
52 Upon conviction the person is subject to a fine not less than
53 twenty-five hundred dollars or not more than twenty-five
54 thousand dollars, or confinement in a county or regional jail for
55 not more than one year or both. In addition, the violator may be
56 guilty of creating or contributing to an open dump as defined in
57 section two, article fifteen, chapter twenty-two of this code and
58 subject to the enforcement provisions of section fifteen of said
59 article.

60 (7) Any person convicted of a second or subsequent
61 violation of this section is subject to double the authorized
62 range of fines and community service for the subsection
63 violated.

64 (8) The sentence of litter cleanup shall be verified by
65 conservation officers from the division of natural resources or
66 environmental inspectors from the division of environmental

67 protection. Any defendant receiving the sentence of litter
68 cleanup shall provide within a time to be set by the court
69 written acknowledgment from a conservation officer or
70 environmental inspector that the sentence has been completed
71 and the litter has been disposed of lawfully.

72 (9) Any person who has been found by the court to have
73 willfully failed to comply with the terms of a litter cleanup
74 sentence imposed by the court pursuant to this section is subject
75 to, at the discretion of the court, double the amount of the
76 original fines and community service penalties.

77 (10) All law-enforcement agencies, officers and environ-
78 mental inspectors shall enforce compliance with this section
79 within the limits of each agency's statutory authority.

80 (11) No portion of this section restricts an owner, renter or
81 lessee in the lawful use of his or her own private property or
82 rented or leased property or to prohibit the disposal of any
83 industrial and other wastes into waters of this state in a manner
84 consistent with the provisions of article eleven, chapter
85 twenty-two of this code. But if any owner, renter or lessee,
86 private or otherwise, knowingly permits any such materials or
87 substances to be placed, deposited, dumped or thrown in such
88 location that high water or normal drainage conditions will
89 cause any such materials or substances to wash into any waters
90 of the state, it is prima facie evidence that the owner, renter or
91 lessee intended to violate the provisions of this section:
92 *Provided*, That if a landowner, renter or lessee, private or
93 otherwise, reports any placing, depositing, dumping or throwing
94 of these substances or materials upon his or her property to the
95 prosecuting attorney, county commission or the division of
96 natural resources or the division of environmental protection,
97 then the landowner, renter or lessee will be presumed to not
98 have knowingly permitted the placing, depositing, dumping or
99 throwing of the materials or substances.

100 (b) Any indication of ownership found in litter shall be
101 prima facie evidence that the person identified violated the
102 provisions of this section: *Provided*, That no inference may be
103 drawn solely from the presence of any logo, trademark, trade
104 name or other similar mass reproduced things of identifying
105 character appearing on the found litter.

106 (c) Every person who is convicted of or pleads guilty to
107 disposing of litter in violation of subsection (a) of this section
108 shall pay a civil penalty in the sum of not less than one hundred
109 dollars nor more than one thousand dollars as costs for cleanup,
110 investigation and prosecution of the case, in addition to any
111 other court costs that the court is otherwise required by law to
112 impose upon a convicted person.

113 The clerk of the circuit court, magistrate court or municipal
114 court in which these additional costs are imposed shall, on or
115 before the last day of each month, transmit fifty percent of a
116 civil penalty received pursuant to this section to the state
117 treasurer for deposit in the state treasury to the credit of a
118 special revenue fund to be known as the litter control fund
119 which is hereby continued. Expenditures for purposes set forth
120 in this section are not authorized from collections but are to be
121 made only in accordance with appropriation and in accordance
122 with the provisions of article three, chapter twelve of this code
123 and upon fulfillment of the provisions set forth in article two,
124 chapter five-a of this code. Amounts collected which are found
125 from time to time to exceed the funds needed for the purposes
126 set forth in this article may be transferred to other accounts or
127 funds and designated for other purposes by appropriation of the
128 Legislature.

129 (d) The remaining fifty percent of each civil penalty
130 collected pursuant to this section shall be transmitted to the
131 county or regional solid waste authority in the county where the
132 litter violation occurred. Moneys shall be expended by the
133 county or regional solid waste authority for the purpose of litter
134 prevention, cleanup and enforcement. The county commission

135 shall cooperate with the county or regional solid waste authority
136 serving the respective county to develop a coordinated litter
137 control program pursuant to section eight, article four, chapter
138 twenty-two-c of this code.

139 (e) The commissioner of the division of motor vehicles,
140 upon registering a motor vehicle or issuing an operator's or
141 chauffeur's license, shall issue to the owner or licensee, as the
142 case may be, a summary of this section and section fourteen,
143 article fourteen, chapter seventeen-c of the code.

144 (f) The commissioner of the division of highways shall
145 cause appropriate signs to be placed at the state boundary on
146 each primary and secondary road, and at other locations
147 throughout the state, informing those entering the state of the
148 maximum penalty provided for disposing of litter in violation
149 of subsection (a) of this section.

150 (g) Any state agency or political subdivision that owns,
151 operates or otherwise controls any public area as may be
152 designated by the director by rule promulgated pursuant to
153 subdivision (8), subsection (a), section twenty-five of this
154 article, shall procure and place litter receptacles at its own
155 expense upon its premises and shall remove and dispose of litter
156 collected in the litter receptacles. After receiving two written
157 warnings from any law-enforcement officer or officers to
158 comply with this subsection or the rules of the director, any
159 person who fails to place and maintain the litter receptacles
160 upon his or her premises in violation of this subsection or the
161 rules of the director shall be fined fifteen dollars per day of the
162 violation.

**CHAPTER 22C. ENVIRONMENTAL RESOURCES;
BOARDS, AUTHORITIES, COMMISSIONS
AND COMPACTS.**

ARTICLE 4. COUNTY AND REGIONAL SOLID WASTE AUTHORITIES.

§22C-4-23. Powers, duties and responsibilities of authority generally.

1 The authority may exercise all powers necessary or
2 appropriate to carry out the purposes and duties provided in this
3 article, including the following:

4 (1) Sue and be sued, plead and be impleaded and have and
5 use a common seal.

6 (2) To conduct its business in the name of the county solid
7 waste authority or the regional solid waste authority, as the case
8 may be, in the names of the appropriate counties.

9 (3) The authority board of directors shall promulgate rules
10 to implement the provisions of sections nine and ten of this
11 article and is authorized to promulgate rules for purposes of this
12 article and the general operation and administration of authority
13 affairs.

14 (4) Adopt, and from time to time, amend and repeal bylaws
15 necessary and proper for the conduct of its affairs consistent
16 with this article.

17 (5) To promulgate such rules as may be proper and neces-
18 sary to implement the purposes and duties of this article.

19 (6) Acquire, construct, reconstruct, enlarge, improve,
20 furnish, equip, maintain, repair, operate, lease or rent or
21 contract for the operation by any person, partnership, corpora-
22 tion or governmental agency, any solid waste facility or
23 collection, transportation and processing facilities related
24 thereto.

25 (7) Issue negotiable bonds, notes, debentures or other
26 evidences of indebtedness and provide for the rights of the
27 holders thereof, incur any proper indebtedness and issue any
28 obligations and give any security therefor which it may deem

29 necessary or advisable in connection with exercising powers as
30 provided herein.

31 (8) Make available the use or services of any solid waste
32 facility collection, transportation and processing facilities
33 related thereto, to any person, partnership, corporation or
34 governmental agency consistent with this article.

35 (9) Acquire by gift or purchase, hold and dispose of real
36 and personal property in the exercise of its powers and duties.

37 (10) Make and enter all contracts, leases and agreements
38 and to execute all instruments necessary or incidental to the
39 performance of its duties and powers.

40 (11) Employ managers, engineers, accountants, attorneys,
41 planners and such other professional and support personnel as
42 are necessary in its judgment to carry out the provisions of this
43 article.

44 (12) Receive and accept from any source such grants, fees,
45 real and personal property, contributions, funds transferred
46 from a solid waste facility and funds of any nature as may
47 become available to the authority, in order to carry out the
48 purposes of this article including, but not limited to, the
49 development, operation or management of litter control
50 programs and recycling programs: *Provided*, That nothing
51 contained in this subsection shall be construed to extend the
52 authority or jurisdiction of the public service commission to
53 activities under this subsection solely because the activities are
54 funded by moneys transferred from a solid waste facility, nor
55 may the use of transferred funds by a solid waste authority be
56 considered by the public service commission in carrying out its
57 duties under section one-f, article two, chapter twenty-four of
58 this code.

59 (13) Cooperate with and make such recommendations to
60 local, state and federal government and the private sector in the

61 technical, planning and public policy aspects of litter control
62 and solid waste management as the authority may find appro-
63 priate and effective to carry out the purposes of this article.

64 (14) Charge, alter and collect rentals, fees, service charges
65 and other charges for the use or services of any solid waste
66 facilities or any solid waste collection, transportation and
67 processing services provided by the authority.

68 (15) Prohibit the dumping of solid waste outside the hours
69 of operation of a solid waste facility.

70 (16) Enforce the hours of operation of a solid waste facility
71 and the mandatory disposal provision in section ten of this
72 article by referring violations to the division of environmental
73 protection or the appropriate law-enforcement authorities.

74 (17) Do all acts necessary and proper to carry out the
75 powers expressly granted to the authority by this article and
76 powers conferred upon the authority by this article.

77 All rules promulgated by the authority pursuant to this
78 article are exempt from the provisions of article three, chapter
79 twenty-nine-a of this code.

CHAPTER 194

**(Com. Sub. for S. B. 193 — By Senators Hunter, Fanning, Minard,
Mitchell, Oliverio, Redd, Facemyer, McKenzie, Kessler and Unger)**

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eleven and twelve, article one, chapter twenty-seven of the code of West Virginia, one

thousand nine hundred thirty-one, as amended; to amend and reenact sections one, two, three, four and ten, article five of said chapter; and to amend and reenact section two, article seven of said chapter, all relating to mental hygiene generally; updating definitions; creating an outpatient commitment alternative upon a voluntary treatment agreement; required findings for commitment; directing convalescent status for certain patients; training for new commissioner; authorizing the hiring of municipal officers for transportation; creating exception to requirement of a forthwith hearing with conditions therefor; authorizing multicounty cooperative agreements to allow prompt hearings during nonjudicial hours or on nonjudicial days; authorizing limited period of evaluation and treatment prior to final hearings with consent of the patient or in the event of a psychiatric or medical emergency; duties of prosecuting attorneys, mental hygiene commissioners, circuit judges and magistrates in mental hygiene proceedings; allowing, under certain circumstances, for hearings to be held in a jurisdiction other than that in which the person is found; authorizing prosecutors, mental hygiene commissioners and sheriffs to function outside their jurisdictions upon agreement; allowing introduction of reliable hearsay at probable cause proceedings; allowing for transfer of out-of-state residents where probable cause is found; allowing counties to seek reimbursement of expenses for out-of-county residents found in the committing county; and requiring only authorized personnel to transport patients involuntarily committed.

Be it enacted by the Legislature of West Virginia:

That sections eleven and twelve, article one, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections one, two, three, four and ten, article five of said chapter be amended and reenacted; and that section two, article seven of said chapter be amended and reenacted, all to read as follows:

Article

- 1. Words and Phrases Defined.
- 5. Involuntary Hospitalization.
- 7. Release, Discharge and Readmission of Patients; Escapees.

ARTICLE 1. WORDS AND PHRASES DEFINED.

§27-1-11. Addiction.

§27-1-12. Likely to cause serious harm.

§27-1-11. Addiction.

1 (a) As used in this chapter, “addiction” means a
 2 maladaptive pattern of substance use leading to clinically
 3 significant impairment or distress as manifested by one or more
 4 of the following occurring within thirty days prior to the filing
 5 of the petition:

6 (1) Recurrent substance use resulting in a failure to fulfill
 7 major role obligations at work, school or home, including, but
 8 not limited to, repeated absences or poor work performance
 9 related to substance use; substance-related absences, suspen-
 10 sions or expulsions from school; or neglect of children or
 11 household;

12 (2) Recurrent use in situations in which it is physically
 13 hazardous, including, but not limited to, driving while intoxi-
 14 cated or operating a machine when impaired by substance use;

15 (3) Recurrent substance-related legal problems; or

16 (4) Continued use despite knowledge or having persistent
 17 or recurrent social or interpersonal problems caused or exacer-
 18 bated by the effects of the substance.

19 (b) As used in this section, “substance” shall mean alcohol,
 20 controlled substances as defined in sections two hundred four,
 21 two hundred six, two hundred eight and two hundred ten, article
 22 two, chapter sixty-a of this code or anything consumed for its

23 psychoactive effect whether or not designed for human con-
24 sumption.

§27-1-12. Likely to cause serious harm.

1 (a) “Likely to cause serious harm” means an individual is
2 exhibiting behaviors consistent with a medically recognized
3 mental disorder or addiction, excluding, however, disorders that
4 are manifested only through antisocial or illegal behavior and
5 as a result of the mental disorder or addiction:

6 (1) The individual has inflicted or attempted to inflict
7 bodily harm on another; or

8 (2) The individual, by threat or action, has placed others in
9 reasonable fear of physical harm to themselves; or

10 (3) The individual, by action or inaction, has presented a
11 danger to others in his or her care; or

12 (4) The individual has threatened or attempted suicide or
13 serious bodily harm to himself or herself; or

14 (5) The individual is behaving in such a manner as to
15 indicate that he or she is unable, without supervision and the
16 assistance of others, to satisfy his or her need for nourishment,
17 medical care, shelter or self-protection and safety so that there
18 is a substantial likelihood that death, serious bodily injury,
19 serious physical debilitation, serious mental debilitation or life-
20 threatening disease will ensue unless adequate treatment is
21 afforded.

22 (b) In making the “likely to cause serious harm” determina-
23 tion, judicial, medical, psychological and other evaluators and
24 decisionmakers should utilize all available information,
25 including psychosocial, medical, hospitalization and psychiatric
26 information and including the circumstances of any previous

27 commitments or convalescent or conditional releases that are
28 relevant to a current situation, in addition to the individual's
29 current overt behavior. The rules of evidence shall be followed
30 in making the "likely to cause serious harm" determination
31 except that hearsay evidence not admissible thereunder may be
32 admitted, except where precluded by statute, if it is of a type
33 commonly relied upon by reasonably prudent persons in the
34 conduct of their affairs.

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§27-5-1. Appointment of mental hygiene commissioner; duties of mental hygiene commissioner; duties of prosecuting attorney; duties of sheriff; duties of supreme court of appeals; use of certified municipal law-enforcement officers.

§27-5-2. Institution of proceedings for involuntary custody for examination; custody; probable cause hearing; examination of individual.

§27-5-3. Admission under involuntary hospitalization for examination; hearing; release.

§27-5-4. Institution of final commitment proceedings; hearing requirements; release.

§27-5-10. Transportation for the mentally ill or substance abuser.

§27-5-1. Appointment of mental hygiene commissioner; duties of mental hygiene commissioner; duties of prosecuting attorney; duties of sheriff; duties of supreme court of appeals; use of certified municipal law-enforcement officers.

1 (a) *Appointment of mental hygiene commissioners.* — The
2 chief judge in each judicial circuit of this state shall appoint a
3 competent attorney and may, if necessary, appoint additional
4 attorneys to serve as mental hygiene commissioners to preside
5 over involuntary hospitalization hearings. Mental hygiene
6 commissioners shall be persons of good moral character and of
7 standing in their profession and they shall, before assuming the
8 duties of such commissioner, take the oath required of other
9 special commissioners as provided in article one, chapter six of
10 this code.

11 All persons newly appointed to serve as mental hygiene
12 commissioners shall attend and complete an orientation course,
13 within one year of their appointment, consisting of at least three
14 days of training provided annually by the supreme court of
15 appeals. In addition, existing mental hygiene commissioners
16 and any magistrates designated by the chief judge of a judicial
17 circuit to hold probable cause and emergency detention
18 hearings involving involuntary hospitalization shall attend and
19 complete a course provided by the supreme court of appeals,
20 which course shall include, but not be limited to, instruction on
21 the manifestations of mental illness and addiction. Persons
22 attending such courses outside the county of their residence
23 shall be reimbursed out of the budget of the supreme court —
24 general judicial for reasonable expenses incurred. The supreme
25 court shall establish rules for such courses, including rules
26 providing for the reimbursement of reasonable expenses as
27 authorized herein.

28 (b) *Duties of mental hygiene commissioners.* —

29 (1) Mental hygiene commissioners may sign and issue
30 summonses for the attendance, at any hearing held pursuant to
31 section four, article five of this chapter, of the individual sought
32 to be committed; may sign and issue subpoenas for witnesses,
33 including subpoenas duces tecum; may place any witness under
34 oath; and may make findings of fact on evidence and may make
35 conclusions of law, but such findings and conclusions shall not
36 be binding on the circuit court. The circuit court, by order
37 entered of record, shall allow the commissioner a reasonable fee
38 for services rendered in connection with each case. Mental
39 hygiene commissioners shall discharge their duties and hold
40 their offices at the pleasure of the chief judge of the judicial
41 circuit in which he or she is appointed and may be removed at
42 any time by such chief judge. It shall be the duty of a mental
43 hygiene commissioner to conduct orderly inquiries into the
44 mental health of the individual sought to be committed concern-

45 ing the advisability of committing the individual to a mental
46 health facility. The mental hygiene commissioner shall safe-
47 guard, at all times, the rights and interests of the individual as
48 well as the interests of the state. The mental hygiene commis-
49 sioner shall make a written report of his or her findings to the
50 circuit court. In any proceedings before any court of record as
51 set forth in this article, the court of record shall appoint an
52 interpreter for any individual who is deaf or cannot speak or
53 who speaks a foreign language and who may be subject to
54 involuntary commitment to a mental health facility.

55 (2) A mental hygiene commissioner appointed by the
56 circuit court of one county or multiple county circuit may serve
57 in such capacity in a jurisdiction other than that of his or her
58 original appointment if such be agreed upon by the terms of a
59 cooperative agreement between the circuit courts and county
60 commissions of contiguous counties entered into to provide
61 prompt resolution of mental hygiene matters during noncourt
62 hours or on nonjudicial days.

63 (c) *Duties of prosecuting attorney.* — It shall be the duty of
64 the prosecuting attorney or one of his or her assistants to
65 represent the applicants in all proceedings filed pursuant to the
66 provisions of this article. The services of a prosecuting attorney
67 or an assistant prosecuting attorney at a proceeding held under
68 the provisions of this article, during noncourt hours or on a
69 nonjudicial day, may be waived by the circuit court, mental
70 hygiene commissioner or magistrate holding such proceeding
71 with the concurrence of the applicant if a finding is made by the
72 circuit court, mental hygiene commissioner or magistrate that
73 the applicant's interests are not jeopardized by such waiver.
74 Notwithstanding any provision of this code to the contrary,
75 prosecuting attorneys may enter into cooperative agreements
76 with prosecuting attorneys of contiguous counties, with the
77 concurrence of their respective circuit courts and county
78 commissions, whereby hearings held during noncourt hours or

79 nonjudicial days may be held in a county other than that where
80 the person is found or prosecuting attorneys or assistant
81 prosecuting attorneys of a county which is party to such a
82 cooperative agreement may serve or a prosecutor in a hearing
83 held in the county where the person is found in order to
84 facilitate prompt resolution of the matter.

85 (d) *Duties of sheriff.* — Upon written order of the circuit
86 court or of a mental hygiene commissioner in the county where
87 the individual formally accused of being mentally ill or
88 addicted is a resident or is found, the sheriff of that county shall
89 take said individual into custody and transport him or her to and
90 from the place of hearing and the mental health facility. The
91 sheriff shall also maintain custody and control of the accused
92 individual during the period of time in which the individual is
93 waiting for the involuntary commitment hearing to be convened
94 and while such hearing is being conducted: *Provided, That an*
95 *individual who is a resident of a state other than West Virginia*
96 *shall, upon a finding of probable cause, be transferred to his or*
97 *her state of residence for treatment pursuant to the provisions*
98 *of subsection (p), section four of this article: Provided, how-*
99 *ever, That where an individual is a resident of West Virginia*
100 *but not a resident of the county in which he or she is found and*
101 *there is a finding of probable cause, the county in which the*
102 *hearing is held may seek reimbursement from the county of*
103 *residence for reasonable costs incurred by the county attendant*
104 *to the mental hygiene proceeding. Notwithstanding any*
105 *provision of this code to the contrary, sheriffs may enter into*
106 *cooperative agreements with sheriffs of contiguous counties,*
107 *with the concurrence of their respective circuit courts and*
108 *county commissions, whereby transportation and security*
109 *responsibilities for hearings held pursuant to the provisions of*
110 *this article during noncourt hours or on nonjudicial days may be*
111 *shared in order to facilitate prompt hearings and to effectuate*
112 *transportation of persons found in need of treatment.*

113 (e) *Duty of sheriff upon presentment to mental health care*
114 *facility.* — Where a person is brought to a mental health care
115 facility for purposes of evaluation for commitment under the
116 provisions of this article, if he or she is violent or combative,
117 the sheriff or his or her designee shall maintain custody of the
118 person in the facility until the evaluation is completed or the
119 county commission shall reimburse the mental health care
120 facility at a reasonable rate for security services provided by the
121 mental health care facility for the period of time the person is
122 at the hospital prior to the determination of mental competence
123 or incompetence.

124 (f) *Duties of supreme court of appeals.* — The supreme
125 court of appeals shall provide uniform petition, procedure and
126 order forms which shall be used in all involuntary hospitaliza-
127 tion proceedings brought in this state.

**§27-5-2. Institution of proceedings for involuntary custody for
examination; custody; probable cause hearing;
examination of individual.**

1 (a) *When application for involuntary custody for examina-*
2 *tion may be made.* — Any adult person may make application
3 for involuntary hospitalization for examination of an individual
4 when said person has reason to believe that:

5 (1) The individual is addicted, as defined in section eleven,
6 article one of this chapter; or

7 (2) The individual is mentally ill and, because of his or her
8 mental illness, the individual is likely to cause serious harm to
9 himself or herself or to others if allowed to remain at liberty
10 while awaiting an examination and certification by a physician
11 or psychologist.

12 (b) *Oath; to whom application for involuntary custody for*
13 *examination is made; contents of application; custody; proba-*
14 *ble cause hearing; examination. —*

15 (1) The person making such application shall do so under
16 oath.

17 (2) Application for involuntary custody for examination
18 may be made to the circuit court or a mental hygiene commis-
19 sioner of the county in which the individual resides or of the
20 county in which he or she may be found.

21 (3) The person making such application shall give such
22 information and state such facts therein as may be required
23 upon the form provided for this purpose by the supreme court
24 of appeals.

25 (4) The circuit court or the mental hygiene commissioner
26 may thereupon enter an order for the individual named in such
27 action to be detained and taken into custody for the purpose of
28 holding a probable cause hearing as provided for in subdivision
29 (5) of this subsection and for the purpose of an examination of
30 the individual by a physician or a psychologist. Such examina-
31 tion shall be provided or arranged by a community mental
32 health center designated by the secretary of the department of
33 health and human resources to serve the county in which the
34 action takes place. Said order shall specify that such hearing be
35 held forthwith and shall provide for the appointment of counsel
36 for the individual: *Provided*, That the order may allow the
37 hearing to be held up to twelve hours after its entry rather than
38 forthwith if the circuit court of the county or circuit in which
39 the person is found has previously entered a standing order
40 which establishes within that jurisdiction a program for
41 placement of persons awaiting a hearing which assures the
42 safety and humane treatment of said persons. Where a physician
43 or psychologist has performed the examination required by the

44 provisions of this subdivision, the community mental health
45 center may waive the requirement of a forthwith hearing upon
46 approving such examination. Notwithstanding the provisions of
47 this subsection, subsection (r), section four of this article shall
48 apply regarding payment by the county commission for
49 examinations at hearings.

50 In the event immediate detention is believed to be necessary
51 for the protection of the individual or others at a time when no
52 circuit court judge or mental hygiene commissioner is available
53 for immediate presentation of the application, a magistrate
54 designated by the chief judge of the judicial circuit may accept
55 the application and, upon a finding that such immediate
56 detention is necessary pending presentation of the application
57 to the circuit court or mental hygiene commissioner, may order
58 the individual to be temporarily detained in custody until the
59 earliest reasonable time that the application can be presented to
60 the circuit court or mental hygiene commissioner, which
61 temporary period of detention may not exceed twenty-four
62 hours: *Provided*, That where the individual has been examined
63 by a psychologist or physician and said psychologist or
64 physician has certified the individual meets the criteria for
65 involuntary hospitalization, the individual may be temporarily
66 detained until the next judicial day. In no event shall an
67 individual be so detained for more than seventy-two hours
68 without a hearing.

69 (5) A probable cause hearing shall be held before a magis-
70 trate designated by the chief judge of the judicial circuit, the
71 mental hygiene commissioner or circuit judge of the county of
72 which the individual is a resident or where he or she was found.
73 If requested by the individual or his or her counsel, the hearing
74 may be postponed for a period not to exceed forty-eight hours.

75 The individual must be present at the hearing and shall have
76 the right to present evidence, confront all witnesses and other

77 evidence against him or her and to examine testimony offered,
78 including testimony by representatives of the community
79 mental health center serving the area. The individual shall have
80 the right to remain silent and to be proceeded against in
81 accordance with the rules of evidence of the supreme court of
82 appeals except as provided for in section twelve, article one of
83 this chapter. At the conclusion of the hearing, the magistrate,
84 mental hygiene commissioner or circuit court judge shall find
85 and enter an order stating whether or not there is probable cause
86 to believe that such individual, as a result of mental illness, is
87 likely to cause serious harm to himself or herself or to others or
88 is addicted.

89 (6) If the magistrate, mental hygiene commissioner or
90 circuit court judge at a probable cause hearing or at a final
91 commitment hearing held pursuant to the provisions of section
92 four of this article finds that the individual, as a result of mental
93 illness, is likely to cause serious harm to himself, herself or
94 others or is addicted and because of such mental illness or
95 addiction requires treatment, the magistrate, mental hygiene
96 commissioner or circuit court judge may consider evidence on
97 the question of whether the individual's circumstances make
98 him or her amenable to outpatient treatment in a nonresidential
99 or nonhospital setting pursuant to a voluntary treatment
100 agreement. Such agreement shall be in writing and approved by
101 the individual, his or her counsel and the magistrate, mental
102 hygiene commissioner or circuit judge and the mental health
103 treatment provider. If the magistrate, mental hygiene commis-
104 sioner or circuit court judge determines that appropriate
105 outpatient treatment is available in a nonresidential or
106 nonhospital setting, the individual may be released to such
107 outpatient treatment upon the terms and conditions of the
108 voluntary treatment agreement. The failure of an individual
109 released to outpatient treatment pursuant to a voluntary
110 treatment agreement to comply with the terms of the voluntary
111 treatment agreement shall constitute evidence that such

112 treatment is insufficient and, after a hearing before a magistrate,
113 mental hygiene commissioner or circuit judge on the issue of
114 whether or not the individual failed or refused to comply with
115 the terms and conditions of the voluntary treatment agreement
116 and whether the individual as a result of mental illness remains
117 likely to cause serious harm to himself, herself or others or
118 remains addicted, the entry of an order requiring admission
119 under involuntary hospitalization pursuant to the provisions of
120 section three of this article may be entered. In the event a
121 person released pursuant to a voluntary treatment agreement is
122 unable to pay for the outpatient treatment and has no applicable
123 insurance coverage, including, but not limited to, private
124 insurance or medicaid, the secretary of health and human
125 resources may transfer funds for the purpose of reimbursing
126 community providers for services provided on an outpatient
127 basis for individuals for whom payment for treatment is the
128 responsibility of the department: *Provided*, That the department
129 may not authorize payment of outpatient services for an
130 individual subject to a voluntary treatment agreement in an
131 amount in excess of the cost of involuntary hospitalization of
132 the individual. The secretary shall establish and maintain fee
133 schedules for outpatient treatment provided in lieu of involun-
134 tary hospitalization. Nothing in the provisions of this article
135 regarding release pursuant to a voluntary treatment agreement
136 or convalescent status shall be construed as creating a right to
137 receive outpatient mental health services or treatment or as
138 obligating any person or agency to provide such services or
139 treatment. Time limitations set forth in this article relating to
140 periods of involuntary commitment to a mental health facility
141 for hospitalization shall not apply to release pursuant to the
142 terms of a voluntary treatment agreement: *Provided, however*,
143 That release pursuant to a voluntary treatment agreement shall
144 not be for a period of more than six months if the individual has
145 not been found to be involuntarily committed during the
146 previous two years and for a period of no more than two years

147 if the individual has been involuntarily committed during the
148 preceding two years. If in any proceeding held pursuant to
149 article five of this chapter the individual objects to the issuance
150 or conditions and terms of an order adopting a voluntary
151 treatment agreement, then the presiding officer shall not enter
152 an order directing treatment pursuant to a voluntary treatment
153 agreement. If involuntary commitment with release pursuant to
154 a voluntary treatment agreement is ordered, the individual made
155 subject to said order may, upon request during the period the
156 order is in effect, have a hearing before a mental hygiene
157 commissioner or circuit judge where the individual may seek to
158 have the order cancelled or modified. Nothing in this section
159 shall affect the appellate and habeas corpus rights of any
160 individual subject to any commitment order.

161 (7) If the certifying physician or psychologist determines
162 that a person requires involuntary hospitalization for an
163 addiction to a substance which, due to the degree of addiction,
164 creates a reasonable likelihood that withdrawal or detoxification
165 from the substance of addiction will cause significant medical
166 complications, the person certifying the individual shall
167 recommend that the individual be closely monitored for
168 possible medical complications. If the magistrate, mental
169 hygiene commissioner or circuit court judge presiding orders
170 involuntary hospitalization, he or she shall include a recommen-
171 dation that the individual be closely monitored in the order of
172 commitment.

**§27-5-3. Admission under involuntary hospitalization for exami-
nation; hearing; release.**

1 (a) *Admission to a mental health facility for examination.*
2 — Any individual may be admitted to a mental health facility
3 for examination and treatment upon entry of an order finding
4 probable cause as provided in section two of this article and
5 upon certification by one physician or one psychologist that he

6 or she has examined the individual and is of the opinion that the
7 individual is mentally ill, and because of such mental illness is
8 likely to cause serious harm to himself or herself or to others if
9 not immediately restrained, or is addicted. Where a magistrate
10 has ordered the temporary detention of an individual pending a
11 hearing pursuant to the provisions of subdivision (4), subsection
12 (b), section two of this article and the individual has been
13 examined by a psychologist or physician and found to meet the
14 criteria for involuntary hospitalization, such individual may be
15 examined, with his or her consent or in the event of a medical
16 or psychiatric emergency, and treated until the next judicial
17 day, or for up to seventy-two hours, whichever shall first occur.
18 The chief medical officer of said mental health facility may,
19 with the approval of the secretary of the department of health
20 and human resources, transfer such individual to a state hospital
21 or to another similar type of mental health facility after deter-
22 mining that no less restrictive treatment alternative is suitable
23 or available. The chief medical officer of the mental health
24 facility admitting the individual shall forthwith make a report
25 thereof to the secretary of the department of health and human
26 resources.

27 (b) *Three-day time limitation on examination.* — If said
28 examination does not take place within three days from the date
29 the individual is taken into custody, the individual shall be
30 released. If the examination reveals that the individual is not
31 mentally ill or addicted, the individual shall be released.

32 (c) *Three-day time limitation on certification.* — The
33 certification required in subsection (a) of this section shall be
34 valid for three days. Any individual with respect to whom such
35 certification has been issued may not be admitted on the basis
36 thereof at any time after the expiration of three days from the
37 date of such examination.

38 (d) *Findings and conclusions required for certification.* —
39 A certification under this section must include findings and
40 conclusions of the mental examination, the date, time and place
41 thereof and the facts upon which the conclusion that involun-
42 tary commitment is necessary is based.

43 (e) *Notice requirements.* — When an individual is admitted
44 to a mental health facility pursuant to the provisions of this
45 section, the chief medical officer thereof shall immediately give
46 notice of the individual's admission to the individual's spouse,
47 if any, and one of the individual's parents or guardians, or if
48 there be no such spouse, parents or guardians, to one of the
49 individual's adult next of kin: *Provided*, That such next of kin
50 shall not be the applicant. Notice shall also be given to the
51 community mental health facility, if any, having jurisdiction in
52 the county of the individual's residence. Such notices other than
53 to the community mental health facility shall be in writing and
54 shall be transmitted to such person or persons at his, her or their
55 last-known address by certified or registered mail, return receipt
56 requested.

57 (f) *Five-day time limitation for examination and certifica-*
58 *tion at mental health facility.* — After the individual's admis-
59 sion to a mental health facility, he or she may not be detained
60 more than five days, excluding Sundays and holidays, unless,
61 within such period, the individual is examined by a staff
62 physician and such physician certifies that in his or her opinion
63 the patient is mentally ill and is likely to injure himself or
64 herself or others or will remain addicted if allowed to be at
65 liberty.

66 (g) *Ten-day time limitation for institution of final commit-*
67 *ment proceedings.* — If, in the opinion of the examining
68 physician, the patient is mentally ill and because of such mental
69 illness is likely to injure himself or herself or others or will
70 continue to abuse a substance to which he or she is addicted if

71 allowed to be at liberty, the chief medical officer shall, within
72 ten days from the date of admission, institute final commitment
73 proceedings as provided in section four of this article. If such
74 proceedings are not instituted within such ten-day period, the
75 patient shall be immediately released. After the request for
76 hearing is filed, the hearing shall not be canceled on the basis
77 that the individual has become a voluntary patient unless the
78 mental hygiene commissioner concurs in the motion for
79 cancellation of the hearing.

80 (h) *Thirty-day time limitation for conclusion of all proceed-*
81 *ings.* — If all proceedings as provided in articles three and four
82 of this chapter are not completed within thirty days from the
83 date of institution of such proceedings, the patient shall be
84 immediately released.

§27-5-4. Institution of final commitment proceedings; hearing requirements; release.

1 (a) *Involuntary commitment.* — Except as provided in
2 section three of this article, no individual may be involuntarily
3 committed to a mental health facility except by order entered of
4 record at any time by the circuit court of the county wherein
5 such person resides or was found, or if the individual is
6 hospitalized in a mental health facility located in a county other
7 than where he or she resides or was found, in the county of the
8 mental health facility and then only after a full hearing on
9 issues relating to the necessity of committing an individual to
10 a mental health facility: *Provided*, That, if said individual
11 objects to the hearing being held in the county where the mental
12 health facility is located, the hearing shall be conducted in the
13 county of the individual's residence.

14 (b) *How final commitment proceedings are commenced.* —
15 Final commitment proceedings for an individual may be
16 commenced by the filing of a written application under oath and

17 the certificate or affidavit is hereinafter provided with the clerk
18 of the circuit court or mental hygiene commissioner of the
19 county of which the individual is a resident, or where he or she
20 may be found, or the county of the mental health facility, if he
21 or she is hospitalized in a mental health facility located in a
22 county other than where he or she resides or may be found by
23 an adult person having personal knowledge of the facts of the
24 case.

25 (c) *Oath; contents of application; who may inspect applica-*
26 *tion; when application cannot be filed. —*

27 (1) The person making such application shall do so under
28 oath.

29 (2) The application shall contain statements by the appli-
30 cant that he or she believes because of symptoms of mental
31 illness the individual is likely to cause serious harm to himself
32 or herself or to others or is addicted and the grounds for such
33 belief, stating in detail the recent overt acts upon which such
34 belief is based.

35 (3) The written application, certificate, affidavit and any
36 warrants issued pursuant thereto, including any papers and
37 documents related thereto, filed with any circuit court or mental
38 hygiene commissioner for the involuntary hospitalization of any
39 individual shall not be open to inspection by any person other
40 than the individual, except upon authorization of the individual
41 or his or her legal representative or by order of the circuit court,
42 and such records may not be published except upon the
43 authorization of the individual or his or her legal representative.

44 (4) Applications shall not be accepted for individuals who
45 only have epilepsy, a mental deficiency or senility.

46 (d) *Certificate filed with application; contents of certifi-*
47 *cate; affidavit by applicant in place of certificate. —*

48 (1) The applicant shall file with his or her application the
49 certificate of a physician or a psychologist stating that in his or
50 her opinion the individual is mentally ill and that because of
51 such mental illness the individual is likely to cause serious
52 harm to himself or herself or to others if he or she is allowed to
53 remain at liberty or is addicted and therefore he or she should
54 be hospitalized, stating in detail the recent overt acts upon
55 which such conclusion is based.

56 (2) A certificate is not necessary only when an affidavit is
57 filed by the applicant showing facts and the individual has
58 refused to submit to examination by a physician or a psycholo-
59 gist.

60 (e) *Notice requirements; eight days' notice required.* —
61 Upon receipt of an application, the mental hygiene commis-
62 sioner or circuit court shall review the application and if it is
63 determined that the facts alleged, if any, are sufficient to
64 warrant involuntary hospitalization, forthwith fix a date for and
65 have the clerk of the circuit court give notice of the hearing: (1)
66 To the individual; (2) to the applicant or applicants; (3) to the
67 individual's spouse, one of the parents or guardians, or if the
68 individual does not have a spouse, parents or parent or guard-
69 ian, to one of the individual's adult next of kin: *Provided*, That
70 such person is not the applicant; (4) to the mental health
71 authorities serving the area; (5) to the circuit court in the county
72 of the individual's residence if the hearing is to be held in a
73 county other than that of such individual's residence; and (6) to
74 the prosecuting attorney of the county in which the hearing is
75 to be held. Such notice shall be served on the individual by
76 personal service of process not less than eight days prior to the
77 date of the hearing and shall specify the nature of the charges
78 against the individual; the facts underlying and supporting the
79 application of involuntary commitment; the right to have
80 counsel appointed; the right to consult with and be represented
81 by counsel at every stage of the proceedings; and the time and

82 place of the hearing. The notice to the individual's spouse,
83 parents or parent or guardian, the individual's adult next of kin,
84 or to the circuit court in the county of the individual's residence
85 may be by personal service of process or by certified or
86 registered mail, return receipt requested, and shall state the time
87 and place of the hearing.

88 (f) *Examination of individual by court-appointed physician*
89 *or psychologist; custody for examination; dismissal of proceed-*
90 *ings. —*

91 (1) Except as provided in subdivision (3) of this subsection,
92 within a reasonable time after notice of the commencement of
93 final commitment proceedings is given, the circuit court or
94 mental hygiene commissioner shall appoint a physician or
95 psychologist to examine the individual and report to the circuit
96 court or mental hygiene commissioner his or her findings as to
97 the mental condition of the individual and the likelihood of him
98 or her causing serious harm to himself or herself or to others or
99 being addicted.

100 (2) If the designated physician or psychologist reports to the
101 circuit court or mental hygiene commissioner that the individ-
102 ual has refused to submit to an examination, the circuit court or
103 mental hygiene commissioner shall order him or her to submit
104 to such examination. The circuit court or mental hygiene
105 commissioner may direct that the individual be detained or
106 taken into custody for the purpose of an immediate examination
107 by the designated physician or psychologist. All such orders
108 shall be directed to the sheriff of the county or other appropriate
109 law-enforcement officer. After such examination has been
110 completed, the individual shall be released from custody unless
111 proceedings are instituted pursuant to section three of this
112 article.

113 (3) If the reports of the appointed physician or psychologist
114 do not confirm that the individual is mentally ill and might be
115 harmful to himself or herself or to others or is addicted then the
116 proceedings for involuntary hospitalization shall be dismissed.

117 (g) *Rights of the individual at the final commitment*
118 *hearing; seven days' notice to counsel required. —*

119 (1) The individual shall be present at the final commitment
120 hearing and he or she, the applicant and all persons entitled to
121 notice of such hearing shall be afforded an opportunity to testify
122 and to present and cross-examine witnesses.

123 (2) In the event that the individual has not retained counsel,
124 the court or mental hygiene commissioner at least six days prior
125 to hearing shall appoint a competent attorney and shall inform
126 the individual of the name, address and telephone number of his
127 or her appointed counsel.

128 (3) The individual shall have the right to have an examina-
129 tion by an independent expert of his or her choice and testi-
130 mony from such expert as a medical witness on his or her
131 behalf. The cost of such independent expert shall be borne by
132 the individual unless he or she is indigent.

133 (4) The individual shall not be compelled to be a witness
134 against himself or herself.

135 (h) *Duties of counsel representing individual; payment of*
136 *counsel representing indigent. —*

137 (1) The counsel representing an individual shall conduct a
138 timely interview, make investigation and secure appropriate
139 witnesses and shall be present at the hearing and protect the
140 interest of the individual.

141 (2) Any counsel representing an individual shall be entitled
142 to copies of all medical reports, psychiatric or otherwise.

143 (3) The circuit court, by order of record, may allow the
144 attorney a reasonable fee not to exceed the amount allowed for
145 attorneys in defense of needy persons as provided in article
146 twenty-one, chapter twenty-nine of this code.

147 (i) *Conduct of hearing; receipt of evidence; no evidentiary*
148 *privilege; record of hearing.* —

149 (1) The circuit court or mental hygiene commissioner shall
150 hear evidence from all interested parties in chamber, including
151 testimony from representatives of the community mental health
152 facility.

153 (2) The circuit court or mental hygiene commissioner shall
154 receive all relevant and material evidence which may be
155 offered.

156 (3) The circuit court or mental hygiene commissioner shall
157 be bound by the rules of evidence promulgated by the supreme
158 court of appeals except that statements made to physicians or
159 psychologists by the individual may be admitted into evidence
160 by the physician's or psychologist's testimony, notwithstanding
161 failure to inform the individual that this statement may be used
162 against him or her. Any psychologist or physician testifying
163 shall bring all records pertaining to said individual to said
164 hearing. Such medical evidence obtained pursuant to an
165 examination under this section, or section two or three of this
166 article, is not privileged information for purposes of a hearing
167 pursuant to this section.

168 (4) All final commitment proceedings shall be reported or
169 recorded, whether before the circuit court or mental hygiene
170 commissioner, and a transcript shall be made available to the
171 individual, his or her counsel or the prosecuting attorney within

172 thirty days, if the same is requested for the purpose of further
173 proceedings. In any case wherein an indigent person intends to
174 pursue further proceedings, the circuit court shall, by order
175 entered of record, authorize and direct the court reporter to
176 furnish a transcript of the hearings.

177 (j) *Requisite findings by the court.* —

178 (1) Upon completion of the final commitment hearing, and
179 the evidence presented therein, the circuit court or mental
180 hygiene commissioner shall make findings as to whether or not
181 the individual is mentally ill and because of illness is likely to
182 cause serious harm to himself or herself or to others if allowed
183 to remain at liberty or is addicted and is a resident of the county
184 in which the hearing is held or currently is a patient at a mental
185 health facility in such county.

186 (2) The circuit court or mental hygiene commissioner shall
187 also make a finding as to whether or not there is a less restric-
188 tive alternative than commitment appropriate for the individual.
189 The burden of proof of the lack of a less restrictive alternative
190 than commitment shall be on the person or persons seeking the
191 commitment of the individual.

192 (3) The findings of fact shall be incorporated into the order
193 entered by the circuit court and must be based upon clear,
194 cogent and convincing proof.

195 (k) *Orders issued pursuant to final commitment hearing;*
196 *entry of order; change in order of court; expiration of order.* —

197 (1) Upon the requisite findings, the circuit court may order
198 the individual to a mental health facility for an indeterminate
199 period or for a temporary observatory period not exceeding six
200 months.

201 (2) The individual shall not be detained in a mental health
202 facility for a period in excess of ten days after a final commit-
203 ment hearing pursuant to this section unless an order has been
204 entered and received by the facility.

205 (3) If the order pursuant to a final commitment hearing is
206 for a temporary observation period, the circuit court or mental
207 hygiene commissioner may, at any time prior to the expiration
208 of such period on the basis of a report by the chief medical
209 officer of the mental health facility in which the patient is
210 confined, hold another hearing pursuant to the terms of this
211 section and in the same manner as the hearing was held as if it
212 were an original petition for involuntary hospitalization to
213 determine whether the original order for a temporary observa-
214 tion period should be modified or changed to an order of
215 indeterminate hospitalization of the patient. At the conclusion
216 of the hearing, the circuit court shall order indeterminate
217 hospitalization of the patient or dismissal of the proceedings.

218 (4) An order for an indeterminate period shall expire of its
219 own terms at the expiration of two years from the date of the
220 last order of commitment unless prior to the expiration, the
221 department of health and human resources, upon findings based
222 on an examination of the patient by a physician or a psycholo-
223 gist, extends the order for indeterminate hospitalization:
224 *Provided*, That if the patient or his or her counsel requests a
225 hearing, then a hearing shall be held by the mental hygiene
226 commissioner or by the circuit court of the county as provided
227 in subsection (a) of this section.

228 (1) *Dismissal of proceedings.* — If the circuit court or
229 mental hygiene commissioner finds that the individual is not
230 mentally ill or addicted, the proceedings shall be dismissed. If
231 the circuit court or mental hygiene commissioner finds that the
232 individual is mentally ill but is not because of such illness likely

233 to cause serious harm to himself or herself or to others if
234 allowed to remain at liberty, the proceedings shall be dismissed.

235 (m) *Immediate notification of order of hospitalization.* —
236 The clerk of the circuit court in which an order directing
237 hospitalization is entered, if not in the county of the individual's
238 residence, shall immediately upon entry thereof forward a
239 certified copy of same to the clerk of the circuit court of the
240 county of which the individual is a resident.

241 (n) *Consideration of transcript by circuit court of county of*
242 *individual's residence; order of hospitalization; execution of*
243 *order.* —

244 (1) If the circuit court or mental hygiene commissioner is
245 satisfied that hospitalization should be ordered but finds that the
246 individual is not a resident of the county in which the hearing
247 is held and the individual is not currently a resident of a mental
248 health facility, a transcript of the evidence adduced at the final
249 commitment hearing of such individual, certified by the clerk
250 of the circuit court, shall forthwith be forwarded to the clerk of
251 the circuit court of the county of which such individual is a
252 resident, who shall immediately present such transcript to the
253 circuit court or mental hygiene commissioner of said county.

254 (2) If the circuit court or mental hygiene commissioner of
255 the county of the residence of the individual is satisfied from
256 the evidence contained in such transcript that such individual
257 should be hospitalized as determined by the standard set forth
258 above, the circuit court shall order the appropriate hospitaliza-
259 tion as though the individual had been brought before the circuit
260 court or its mental hygiene commissioner in the first instance.

261 (3) This order shall be transmitted forthwith to the clerk of
262 the circuit court of the county in which the hearing was held
263 who shall execute said order promptly.

264 (o) *Order of custody to responsible person.* — In lieu of
265 ordering the patient to a mental health facility, the circuit court
266 may order the individual delivered to some responsible person
267 who will agree to take care of the individual and the circuit
268 court may take from such responsible person a bond in an
269 amount to be determined by the circuit court with condition to
270 restrain and take proper care of such individual until further
271 order of the court.

272 (p) *Individual not a resident of this state.* — If the individ-
273 ual found to be mentally ill or addicted by the circuit court or
274 mental hygiene commissioner is a resident of another state, this
275 information shall be forthwith given to the secretary of the
276 department of health and human resources, or to his or her
277 designee, who shall make appropriate arrangements for transfer
278 of the individual to the state of his or her residence conditioned
279 on the agreement of the individual except as qualified by the
280 interstate compact on mental health.

281 (q) *Report to the secretary of the department of health and*
282 *human resources.* —

283 (1) The chief medical officer of a mental health facility
284 admitting a patient pursuant to proceedings under this section
285 shall forthwith make a report of such admission to the secretary
286 of the department of health and human resources or to his or her
287 designee.

288 (2) Whenever an individual is released from custody due to
289 the failure of an employee of a mental health facility to comply
290 with the time requirements of this article, the chief medical
291 officer of such mental health facility shall forthwith after the
292 release of the individual make a report to the secretary of the
293 department of health and human resources or to his or her
294 designee of the failure to comply.

295 (r) *Payment of some expenses by the state; mental hygiene*
296 *fund established; expenses paid by the county commission. —*

297 (1) The state shall pay the commissioner's fee and such
298 court reporter fees as are not paid and reimbursed under article
299 twenty-one, chapter twenty-nine of this code out of a special
300 fund to be established within the supreme court of appeals to be
301 known as the "mental hygiene fund".

302 (2) The county commission shall pay out of the county
303 treasury all other expenses incurred in the hearings conducted
304 under the provisions of this article whether or not hospitaliza-
305 tion is ordered, including any fee allowed by the circuit court by
306 order entered of record for any physician, psychologist and
307 witness called by the indigent individual.

§27-5-10. Transportation for the mentally ill or substance abuser.

1 (a) Whenever transportation of an individual is required
2 under the provisions of article four or five of this chapter, it
3 shall be the duty of the sheriff to provide immediate transporta-
4 tion to or from the appropriate mental health facility or state
5 hospital: *Provided*, That, where hospitalization occurs pursuant
6 to article four of this chapter, the sheriff may permit, upon the
7 written request of a person having proper interest in the
8 individual's hospitalization, for the interested person to arrange
9 for the individual's transportation to the mental health facility
10 or state hospital if the sheriff determines that such means are
11 suitable given the individual's condition.

12 (b) Upon written agreement between the county commis-
13 sion on behalf of the sheriff and the directors of the local
14 community mental health center and emergency medical
15 services, an alternative transportation program may be ar-
16 ranged. The agreement shall clearly define the responsibilities
17 of each of the parties, the requirements for program participa-

18 tion and the persons bearing ultimate responsibility for the
19 individual's safety and well-being.

20 (c) *Use of certified municipal law-enforcement officers.* —
21 Sheriffs and municipal governments are hereby authorized to
22 enter into written agreements whereby certified municipal law-
23 enforcement officers may perform the duties of the sheriff as
24 described in this article. The agreement shall determine
25 jurisdiction, responsibility of costs and all other necessary
26 requirements, including training related to the performance of
27 these duties, and shall be approved by the county commission
28 and circuit court of the county in which the agreement is made.
29 For purposes of this subsection, "certified municipal
30 law-enforcement officer" means any duly authorized member
31 of a municipal law-enforcement agency who is empowered to
32 maintain public peace and order, make arrests and enforce the
33 laws of this state or any political subdivision thereof, other than
34 parking ordinances, and who is currently certified as a law-
35 enforcement officer pursuant to article twenty-nine, chapter
36 thirty of this code.

37 (d) Nothing in this section is intended to alter security
38 responsibilities for the patient by the sheriff unless mutually
39 agreed upon as provided in subsection (c) of this section.

**ARTICLE 7. RELEASE, DISCHARGE AND READMISSION OF PATIENTS;
ESCAPEES.**

§27-7-2. Release of patients on convalescent status.

1 (a) The chief medical officer of a mental health facility may
2 release an involuntary patient on convalescent status (trial visit)
3 when the chief medical officer believes such release is in the
4 best interest of the patient. Release on convalescent status shall
5 include provisions for continuing responsibility to and by a
6 mental health facility, not necessarily the facility in which the
7 patient was previously hospitalized, including a plan of

8 treatment on an outpatient basis to ensure that the patient
9 receives whatever care and treatment he or she might require.
10 At the end of six months on convalescent status, the patient
11 must be discharged from any involuntary commitment order
12 that might have been entered against him or her and he or she
13 cannot be involuntarily returned to any mental health facility
14 unless a new commitment proceeding has been instituted
15 against him or her. When a patient released on convalescent
16 status is discharged from his or her involuntary commitment, it
17 shall be the responsibility of the chief medical officer of the
18 mental health facility of which the individual was a patient
19 prior to being placed on convalescent status to immediately
20 make a report of the discharge of the patient to the circuit court
21 or mental hygiene commissioner of the county in which the
22 involuntary hospitalization was ordered and to the circuit court
23 or mental hygiene commissioner of the county wherein the
24 individual is a resident.

25 (b) Notwithstanding any provision of this code to the
26 contrary, anytime an individual is involuntarily committed to a
27 mental health facility for inpatient treatment pursuant to the
28 provisions of article five of this chapter due to a mental illness
29 and it is determined by the medical director of the mental health
30 facility that the use of medication by the individual is necessary
31 to avoid the recurrence of the behavior which caused the
32 involuntary hospitalization, initial release from the mental
33 health facility shall be on convalescent status with the require-
34 ment that the individual follow a designated treatment plan
35 which may include the taking of medication unless the medical
36 director makes a written finding that release on convalescent
37 status will serve no treatment purpose. If an individual released
38 on convalescent status does not comply with the terms and
39 conditions of convalescent status, any person may file a petition
40 to revoke such convalescent status and said petition shall be
41 subject to the procedures and provisions of this article.

CHAPTER 195

(Com. Sub. for S. B. 631 — By Senators Tomblin,
Mr. President, Anderson, Bailey, Bowman, Caldwell, Chafin,
Craig, Edgell, Facemyer, Fanning, Helmick, Jackson, Kessler,
Love, McCabe, Minard, Minear, Plymale, Prezioso, Redd, Ross,
Rowe, Sharpe, Snyder, Unger, Wooton, Sprouse, McKenzie,
Oliverio, Mitchell and Hunter)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter five-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two, relating to creating the West Virginia clean coal technology council to develop pilot projects relating to clean coal and alternative coal use; legislative findings; definitions; membership and terms of the council; meeting requirements; continuation of council; and powers and duties of the council.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WEST VIRGINIA CLEAN COAL TECHNOLOGY ACT.

§5C-2-1. Legislative findings.

§5C-2-2. Definitions.

§5C-2-3. Creation and membership of the West Virginia clean coal technology council.

§5C-2-4. Administration.

§5C-2-5. Powers, duties, information and reports of council.

§5C-2-6. Continuation of council.

§5C-2-1. Legislative findings.

1 (a) The Legislature finds that:

2 (1) Coal is an important fuel source for keeping the
3 household energy costs low in the state of West Virginia;

4 (2) Continued protection of the state's environment, public
5 health and welfare requires that new emissions reduction
6 technologies that protect and improve air quality be evaluated
7 for their environmental effectiveness and economic viability;

8 (3) The diversity of fuel used to generate electricity is a
9 significant factor in providing reliable and economical energy
10 to the citizens of the state of West Virginia;

11 (4) The price of electricity generated with coal has re-
12 mained relatively unchanged over the past twenty years;

13 (5) The continued recovery and utilization of coal resources
14 are important to the state's economy;

15 (6) Advancements in clean coal technology clearly demon-
16 strate that electricity from coal can be produced in a more
17 efficient, economical and environmentally friendly manner; and

18 (7) Advancements in alternative coal usage has produced
19 useful household, commercial and industrial technologies.

20 (b) The Legislature determines that, consistent with the
21 protection of the public health and welfare, the protection of air
22 quality, the protection of the environment, the operation of
23 existing industries, the enhancement of the long-term economic
24 health and the improved reliability of electric generation in the
25 state, it is a goal of this state's energy policy that technologies
26 be explored to increase the efficiencies and decrease the
27 emissions from electricity generated by coal.

28 (c) It is the policy of this state that clean coal technologies
29 and alternative coal uses will be explored in order to:

30 (1) Preserve fuel diversity and maintain reliable, low-cost
31 sources of electric power;

32 (2) Identify technologies for reducing the emissions from
33 existing coal-fired electric generation; and

34 (3) Identify new, cleaner coal-fired electric generation
35 technologies that may be used to provide new generating
36 capacity.

§5C-2-2. Definitions.

1 In this section:

2 (1) "Council" means the West Virginia clean coal technol-
3 ogy council.

4 (2) "Designated agency" means the state agency designated
5 by the council to provide administrative support to the council.

6 (3) "Pilot projects" means the voluntary application of new
7 coal utilization technology on existing or new facilities de-
8 signed to reduce the emission of air pollutants.

§5C-2-3. Creation and membership of the West Virginia clean coal technology council.

1 (a) The West Virginia clean coal technology council is
2 created with legislative oversight to coordinate actions for the
3 study and development of clean coal technology pilot projects
4 in this state.

5 (b) The council is composed of:

6 (1) Three state senators to be appointed by the president of
7 the Senate, with one being designated as cochair;

8 (2) Three state delegates to be appointed by the speaker of
9 the House, with one being designated as cochair;

10 (3) Two members representing coal operators' viewpoint to
11 be appointed by the governor from a list of three nominees for
12 each position submitted by the major trade association which
13 represents coal operators accounting for over one half of the
14 coal produced in mines in this state in the year prior to the year
15 in which the appointment is to be made;

16 (4) Two members representing coal miners' viewpoint to be
17 appointed by the governor from a list of three nominees for
18 each position submitted by the highest ranking official within
19 the major employee organization representing coal miners; and

20 (5) Two members who have knowledge of and experience
21 in the field of coal technology to be appointed by the governor.

§5C-2-4. Administration.

1 (a) Members of the council shall be appointed for two-year
2 terms and may be reappointed for additional terms;

3 (b) The council shall meet not less than once each calendar
4 quarter for the first year and at a frequency to be determined by
5 the council thereafter, at a time determined by the council and
6 at the call of the cochairs;

7 (c) An appropriate state agency shall be designated by the
8 council as being responsible for administering the council. The
9 designated agency shall provide, from its existing staff, the staff
10 necessary to assist the council in carrying out its responsibili-
11 ties. This agency shall have the authority to request and

12 distribute federal funding for use by the council in carrying out
13 its responsibilities;

14 (d) The council is subject to the administrative procedures
15 act pursuant to chapter twenty-nine-a of this code.

§5C-2-5. Powers, duties, information and reports of council.

1 (a) The council shall:

2 (1) Coordinate the activities of the designated agency with
3 regard to the specific clean coal technology charges of this
4 council with appropriate private, public, state or federal
5 agencies/organizations;

6 (2) Provide direction to the designated agency to study,
7 develop and promulgate requests for proposals for pilot projects
8 in West Virginia that will assist the council in evaluating
9 technologies, assessing economics, evaluating the environmen-
10 tal benefits, seeking funds, evaluating the useful life of pilot
11 projects and determining the importance of clean coal technolo-
12 gies to energy policy in West Virginia. Requests for proposals
13 shall include an assessment of the potential for the use of
14 financial and other incentives for potential respondents;

15 (3) Provide oversight to the designated agency in seeking
16 public and private funding to support the activities of the
17 council and the financing of pilot projects;

18 (4) Determine a reasonable projected duration for the pilot
19 projects;

20 (5) Encourage and facilitate the development of alternative
21 coal uses and related coal technologies;

22 (6) File with the governor, speaker of the House of Dele-
23 gates and president of the Senate before the date that the next
24 regular legislative session convenes a report of the council's

25 activities during the two proceeding years and any recommen-
26 dations for legislation considered necessary with regard to the
27 pilot projects; and

28 (7) Publish the report required by subdivision (6) of this
29 subsection.

30 (b) The designated state agency having the responsibility
31 for administering the clean coal technology council shall
32 maintain a public file relating to the council.

33 (c) The designated agency having responsibility for
34 administering the clean coal technology council shall make
35 available to the public a copy of any council report that is
36 provided to the Legislature.

§5C-2-6. Continuation of council.

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the council for clean coal technology shall continue to
3 exist until the first day of July, two thousand five, unless sooner
4 terminated or unless continued or reestablished pursuant to the
5 provisions of that article.

CHAPTER 196

(S. B. 689 — By Senators Jackson, Kessler, Fanning and Minear)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections thirteen-a, twenty-two-a and thirty-a, article three, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the surface coal mining and reclamation act; preblast survey requirements; notification to certain owners and occupants

of nearby man-made dwellings and structures; and expanding the operations to which the requirements apply.

Be it enacted by the Legislature of West Virginia:

That sections thirteen-a, twenty-two-a and thirty-a, 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.

§22-3-13a. Preblast survey requirements.

§22-3-22a. Blasting restrictions; site specific blasting design requirement.

§22-3-30a. Blasting requirements; liability and civil penalties in the event of property damage.

§22-3-13a. Preblast survey requirements.

1 (a) At least thirty days prior to commencing blasting, as
2 defined in section twenty-two-a of this article, an operator or an
3 operator's designee shall make the following notifications in
4 writing to all owners and occupants of man-made dwellings or
5 structures that the operator or operator's designee will perform
6 preblast surveys in accordance with subsection (f) of this
7 section:

8 (1) For surface mining operations that are less than two
9 hundred acres in a single permitted area or less than three
10 hundred acres of contiguous or nearly contiguous area of two or
11 more permitted areas, the required notifications shall be to all
12 owners and occupants of man-made dwellings or structures
13 within five tenths of a mile of the permitted area or areas;

14 (2) For all other surface mining operations, the required
15 notifications shall be to all owners and occupants of man-made
16 dwellings or structures within five tenths of a mile of the

17 permitted area or areas or seven tenths of a mile of the proposed
18 blasting site, whichever is greater;

19 (3) For permitted surface disturbance of underground
20 mines, the required notifications shall be to all owners and
21 occupants of man-made dwellings or structures within five
22 tenths of a mile of the permitted surface area or areas.

23 (b) Within thirty days of the effective date of this section,
24 any operator identified in subdivision (2), subsection (a) of this
25 section that has already completed preblast surveys for man-
26 made dwellings or structures within five tenths of a mile of the
27 permit area and has commenced operations by the effective date
28 of this section shall notify in writing all additional owners and
29 occupants of man-made dwellings or structures within seven
30 tenths of a mile of the proposed blasting site. Except for those
31 dwellings or structures for which the operator secures a written
32 waiver or executes an affidavit in accordance with the require-
33 ments of subsection (c) of this section, the operator or the
34 operator's designee must perform the additional preblast
35 surveys in accordance with subsection (f) of this section within
36 ninety days of the effective date of this section.

37 (c) An occupant or owner of a man-made dwelling or
38 structure within the areas described in subdivision (1) or (2),
39 subsection (a) of this section may waive the right to a preblast
40 survey in writing. If a dwelling is occupied by a person other
41 than the owner, both the owner and the occupant must waive
42 the right to a preblast survey in writing. If an occupant or owner
43 of a man-made dwelling or structure refuses to allow the
44 operator or the operator's designee access to the dwelling or
45 structure and refuses to waive in writing the right to a preblast
46 survey or to the extent that access to any portion of the struc-
47 ture, underground water supply or well is impossible or
48 impractical under the circumstances, the preblast survey shall
49 indicate that access was refused, impossible or impractical. The

50 operator or the operator's designee shall execute a sworn
51 affidavit explaining the reasons and circumstances surrounding
52 the refusals. The office of explosives and blasting may not
53 determine the preblast survey to be incomplete because it
54 indicates that access to a particular structure, underground
55 water supply or well was refused, impossible or impractical.
56 The operator shall send copies of all written waivers and
57 affidavits executed pursuant to this subsection to the office of
58 explosives and blasting.

59 (d) If a preblast survey was waived by the owner and was
60 within the requisite area and the property was sold, the new
61 owner may request a preblast survey from the operator.

62 (e) An owner within the requisite area may request, from
63 the operator, a preblast survey on structures constructed after
64 the original preblast survey.

65 (f) The preblast survey shall include:

66 (1) The names, addresses or description of structure
67 location and telephone numbers of the owner and the residents
68 of the structure being surveyed and the structure number from
69 the permit blasting map;

70 (2) The current home insurer of the owner and the residents
71 of the structure;

72 (3) The names, addresses and telephone numbers of the
73 surface mining operator and the permit number;

74 (4) The current general liability insurer of the surface
75 mining operator;

76 (5) The name, address and telephone number of the person
77 or firm performing the preblast survey;

78 (6) The current general liability insurer of the person or
79 firm performing the preblast survey;

80 (7) The date of the preblast survey and the date it was
81 mailed or delivered to the office of explosives and blasting;

82 (8) A general description of the structure and its appurte-
83 nances, including, but not limited to: (A) The number of stories;
84 (B) the construction materials for the frame and the exterior and
85 interior finish; (C) the type of construction including any
86 unusual or substandard construction; and (D) the approximate
87 age of the structure;

88 (9) A general description of the survey methods and the
89 direction of progression of the survey, including a key to
90 abbreviations used;

91 (10) Written documentation and drawings, videos or
92 photographs of the preblast defects and other physical condi-
93 tions of all structures, appurtenances and water sources which
94 could be affected by blasting;

95 (11) Written documentation and drawings, videos or
96 photographs of the exterior and interior of the structure to
97 indicate preblast defects and condition;

98 (12) Written documentation and drawings, videos or
99 photographs of the exterior and interior of any appurtenance of
100 the structure to indicate preblast defects and condition;

101 (13) Sufficient exterior and interior photographs or videos,
102 using a variety of angles, of the structure and its appurtenances
103 to indicate preblast defects and the condition of the structure
104 and appurtenances;

105 (14) Written documentation and drawings, videos or
106 photographs of any unusual or substandard construction

107 technique and materials used on the structure or its appurte-
108 nances or both structure and appurtenances;

109 (15) Written documentation relating to the type of water
110 supply, including a description of the type of system and
111 treatment being used, an analysis of untreated water supplies,
112 a water analysis of water supplies other than public utilities and
113 information relating to the quantity and quality of water;

114 (16) When the water supply is a well, written documenta-
115 tion, where available, relating to the type of well; the well log;
116 the depth, age and type of casing or lining; the static water
117 level; flow data; the pump capacity; the drilling contractor; and
118 the source or sources of the documentation;

119 (17) A description of any portion of the structure and
120 appurtenances not documented or photographed and the
121 reasons;

122 (18) The signature of the person performing the survey; and

123 (19) Any other information required by the chief which
124 additional information shall be established by rule in accor-
125 dance with article three, chapter twenty-nine-a of this code.

126 (g) Except for additional preblast surveys prepared within
127 one hundred twenty days of the effective date of this section,
128 pursuant to subsection (b) of this section, the preblast survey
129 shall be submitted to the office of explosives and blasting at
130 least fifteen days prior to the commencement of any production
131 blasting. The office of explosives and blasting shall review each
132 preblast survey as to form and completeness only and notify the
133 operator of any deficiencies: *Provided*, That once all required
134 surveys have been reviewed and accepted by the office of
135 explosives and blasting, blasting may commence sooner than
136 fifteen days after submittal. The office of explosives and

137 blasting shall provide a copy of the preblast survey to the owner
138 or occupant.

139 (h) The surface mining operator shall file notice of the
140 preblast survey or the waiver in the office of the county clerk of
141 the county commission of the county where the man-made
142 dwelling or structure is located to notify the public that a
143 preblast survey has been conducted or waived. The notice shall
144 be on a form prescribed by the office of explosives and blasting.

145 (i) The chief of the office of explosives and blasting shall
146 propose rules for legislative approval in accordance with article
147 three, chapter twenty-nine-a of this code dealing with preblast
148 survey requirements and setting the qualifications for individu-
149 als and firms performing preblast surveys.

146 (j) The provisions of this section do not apply to the
147 extraction of minerals by underground mining methods.

**§22-3-22a. Blasting restrictions; site specific blasting design
requirement.**

1 (a) For purposes of this section, the term “production
2 blasting” means blasting that removes the overburden to expose
3 underlying coal seams and does not include construction
4 blasting.

5 (b) For purposes of this section, the term “construction
6 blasting” means blasting to develop haul roads, mine access
7 roads, coal preparation plants, drainage structures or under-
8 ground coal mine sites and does not include production
9 blasting.

10 (c) For purposes of this section, the term “protected
11 structure” means any of the following structures that are
12 situated outside the permit area: An occupied dwelling; a
13 temporarily unoccupied dwelling which has been occupied
14 within the past ninety days; a public building; a structure for
15 commercial purposes; a school; a church; a community or
16 institutional building; and a public park or a water well.

17 (d) Production blasting is prohibited within three hundred
18 feet of a protected structure or within one hundred feet of a
19 cemetery.

20 (e) Blasting within one thousand feet of a protected
21 structure shall have a site-specific blast design approved by the
22 office of explosives and blasting. The site-specific blast design
23 shall limit the type of explosives and detonating equipment, the
24 size, the timing and frequency of blasts to do the following:

25 (1) Prevent injury to persons; (2) prevent damage to public
26 and private property outside the permit area; (3) prevent
27 adverse impacts on any underground mine; (4) prevent change
28 in the course, channel or availability of ground or surface water
29 outside the permit area; and (5) reduce dust outside the permit
30 area.

31 In the development of a site-specific blasting plan, consid-
32 eration shall be given, but is not limited to, the physical
33 condition, type and quality of construction of the protected
34 structure, the current use of the protected structure and the
35 concerns of the owner or occupant living in the protected
36 structures identified in the blasting schedule notification area.

37 (f) An owner or occupant of a protected structure may
38 waive the blasting prohibition within three hundred feet. If a
39 protected structure is occupied by a person other than the
40 owner, both the owner and the occupant of the protected
41 structure shall waive the blasting prohibition within three
42 hundred feet in writing. The operator shall send copies of all
43 written waivers executed pursuant to this subsection to the
44 office of explosives and blasting. Written waivers executed and
45 filed with the office of explosives and blasting are valid during
46 the life of the permit or any renewals of the permit and are
47 enforceable against any subsequent owners or occupants of the
48 protected structure.

49 (g)The provisions of this section do not apply to the
50 following: (1) Underground coal mining operations; (2) the
51 surface operations and surface impacts incident to an under-
52 ground coal mine; and (3) the extraction of minerals by
53 underground mining methods or the surface impacts of the
54 underground mining methods: *Provided*, That nothing con-
55 tained in this section may be construed to exempt any coal
56 mining operation from the general performance standards as
57 contained in section thirteen of this article and any rules
58 promulgated pursuant to said section.

**§22-3-30a. Blasting requirements; liability and civil penalties in
the event of property damage.**

1 (a) Blasting shall be conducted in accordance with the rules
2 and laws established to regulate blasting.

3 (b) If the division of environmental protection establishes
4 after an inspection that a blast at a surface coal mine operation
5 as defined by the provisions of subdivision (2), subsection (a),
6 section thirteen-a of this article was not in compliance with the
7 regulations governing blasting parameters and resulted in
8 property damage to a protected structure, as defined in section
9 twenty-two-a of this article, other than water wells, the follow-
10 ing penalties shall be imposed for each permit area or contigu-
11 ous permit areas where the blasting was out of compliance:

12 (1) For the first offense, the operator shall be assessed a
13 penalty of not less than one thousand dollars nor more than five
14 thousand dollars.

15 (2) For the second offense and each subsequent offense
16 within one year of the first offense, the surface mining operator
17 shall be assessed a penalty of not less than five thousand dollars
18 nor more than ten thousand dollars.

19 (3) For the third offense and any subsequent offense within
20 one year of the first offense, or for the failure to pay any

21 assessment set forth within a reasonable time established by the
22 director, the surface mining operator's permit is subject to an
23 immediate issuance of a cessation order, as set out in section
24 sixteen of this article. The cessation order shall only be released
25 upon written order of the director of the division of environ-
26 mental protection when the following conditions have been
27 met:

28 (A) A written plan has been established and filed with the
29 director assuring that additional violations will not occur;

30 (B) The permittee has provided compensation for the
31 property damages or the assurance of adequate compensation
32 for the property damages that have occurred; and

33 (C) A permittee shall provide such monetary and other
34 assurances as the director considers appropriate to compensate
35 for future property damages. The monetary assurances required
36 shall be in an amount at least equal to the amount of compensa-
37 tion required in paragraph (B), subdivision (3) of this subsec-
38 tion.

39 (4) In addition to the penalties described in subdivisions
40 (1), (2) and (3) of this subsection for the second and subsequent
41 offenses on any one permitted area regardless of the time
42 period, the owner of the protected structure is entitled to a
43 rebuttable presumption that the property damage is a result of
44 the blast if: (A) A preblast survey was performed; and (B) the
45 blasting site to which the second or subsequent offense relates
46 is within seven tenths of a mile of the protected structure.

47 (5) No more than one offense may arise out of any one shot.
48 For purposes of this section, "shot" means a single blasting
49 event composed of one or multiple detonations of explosive
50 material or the assembly of explosive materials for this purpose.
51 One "shot" may be composed of numerous explosive charges
52 detonated at intervals measured in milliseconds.

53 (c) Notwithstanding the provisions of subsections (a) and
54 (b) of this section, the division of environmental protection may
55 not impose penalties, as provided for in subsection (b) of this
56 section, on an operator for the violation of any rule identified in
57 subsection (b) of this section that is merely administrative in
58 nature.

59 (d) The remedies provided in this section are not exclusive
60 and may not bar an owner or occupant from any other remedy
61 accorded by law.

62 (e) Where inspection by the division of environmental
63 protection establishes that production blasting, in violation of
64 section twenty-two-a of this article, was done within three
65 hundred feet of a protected structure, without an approved site-
66 specific blast design or not in accordance with an approved site-
67 specific blast design for production blasting within one thou-
68 sand feet of any protected structure as defined in section
69 twenty-two-a of this article or within one hundred feet of a
70 cemetery, the monetary penalties and revocation, as set out in
71 subsection (b) of this section, apply.

72 (f) All penalties and liabilities as set forth in subsection (b)
73 of this section shall be assessed by the director, collected by the
74 director and deposited with the treasurer of the state of West
75 Virginia in the "general school fund".

76 (g) The director shall propose rules for legislative approval
77 pursuant to article three, chapter twenty-nine-a of this code for
78 the implementation of this section.

79 (h) The provisions of this section do not apply to the
80 extraction of minerals by underground mining methods:
81 *Provided*, That nothing contained in this section may be
82 construed to exempt any coal mining operation from the general
83 performance standards as contained in section thirteen of this
84 article and any rules promulgated pursuant thereto.

CHAPTER 197

(Com. Sub. for S. B. 53 — By Senator Anderson)

[Passed April 14, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one hundred one, three hundred three, three hundred eight, three hundred nine and three hundred ten, article two-a, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the establishment of standards and procedures for the use and maintenance of diesel-powered equipment in underground coal mines; general prohibition on use of diesel equipment in underground mines; diesel equipment commission; extending the time for the commission to promulgate initial rules; eliminating the arbitration process; providing for petition to commission for exemption from prohibition on diesel equipment; and granting authority to commission to grant certain limited site-specific requests.

Be it enacted by the Legislature of West Virginia:

That sections one hundred one, three hundred three, three hundred eight, three hundred nine and three hundred ten, article two-a, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2A. USE OF DIESEL-POWERED EQUIPMENT IN UNDERGROUND COAL MINES.

Part I. General Provisions.

§22A-2A-101. Use of diesel-powered equipment authorized.

§22A-2A-303. Appointment and terms of commission members.

§22A-2A-308. Promulgation of initial rules by the commission.

§22A-2A-309. Commission's authority to approve site-specific experimental testing prior to initial rules.

§22A-2A-310. Duties of commission following promulgation of initial rules.

§22A-2A-101. Use of diesel-powered equipment authorized.

1 Diesel-powered equipment for use in underground coal
2 mines may only be approved, operated and maintained in
3 accordance with rules, requirements and standards established
4 pursuant to this article. Diesel-powered equipment may not be
5 used in underground coal mines until the West Virginia diesel
6 equipment commission promulgates its initial rules, require-
7 ments and standards governing the operation of diesel equip-
8 ment in underground coal mines: *Provided*, That the diesel
9 equipment commission may approve limited site-specific
10 requests for experimental and testing use of diesel-powered
11 equipment in underground coal mines and for the use of
12 alternative diesel-related health and safety technologies and
13 methods consistent with the provisions of section three hundred
14 ten of this article.

§22A-2A-303. Appointment and terms of commission members.

1 (a) The members of the commission shall be appointed to
2 initial terms as follows:

3 (1) Two members shall serve for a term beginning on the
4 first day of May, one thousand nine hundred ninety-seven, and
5 ending on the thirtieth day of June, one thousand nine hundred
6 ninety-nine;

7 (2) Two members shall serve for a term beginning on the
8 first day of May, one thousand nine hundred ninety-seven, and
9 ending on the thirtieth day of June, two thousand;

10 (3) Two members shall serve for a term beginning on the
11 first day of May, one thousand nine hundred ninety-seven, and
12 ending on the thirtieth day of June, two thousand one.

13 (b) Of the two members appointed under each of subdivi-
14 sions (1), (2) and (3), subsection (a) of this section, one shall be
15 a person who can reasonably be expected to represent the
16 viewpoint or interests of coal operators in this state and one
17 shall be a person who can reasonably be expected to represent
18 the viewpoint or interests of working miners in this state.

19 (c) Members serving on the commission on the effective
20 date of the amendment of this section may continue to serve
21 until the expiration of their terms. Thereafter, members shall be
22 nominated and appointed in the manner provided in this section
23 and section three hundred four of this article.

24 (d) After the initial appointments, all members shall be
25 appointed for terms of four years. Members are eligible for
26 reappointment.

§22A-2A-308. Promulgation of initial rules by the commission.

1 (a) The West Virginia diesel equipment commission shall
2 prepare and adopt the initial rules for the operation of diesel
3 equipment in underground coal mines in this state. In preparing
4 and adopting initial rules, the commission shall consider the
5 highest achievable measures of protection for miners' health
6 and safety through available technology, engineering controls
7 and performance requirements and shall further consider the
8 cost, availability, adaptability and suitability of any available
9 technology, engineering controls and performance requirements
10 as they relate to the use of diesel equipment in underground
11 coal mines.

12 (b) In promulgating the initial rules pursuant to subsection
13 (a) of this section, the commission shall follow the procedures

14 set forth in article three, chapter twenty-nine-a of this code that
15 are prescribed for an agency proposing a legislative rule, to the
16 point where an agency would approve a rule for submission to
17 the Legislature. At that point, the commission shall proceed to
18 final adoption of the initial rules and file a notice of the final
19 adoption in the state register and with the legislative rule-
20 making review committee. Final adoption of the initial rules
21 may be approved only upon a majority vote of all six members
22 of the commission. All six members must be present when a
23 vote is taken. Upon final adoption by the commission, the initial
24 rules are thereby promulgated and have the effect of law
25 without further action by the commission or the Legislature.
26 The initial rules shall be published in the code of state rules and
27 continue in effect until modified or superseded in accordance
28 with the provisions of this article.

**§22A-2A-309. Commission's authority to approve site-specific
experimental testing prior to initial rules.**

1 The commission is hereby authorized to approve limited
2 site-specific requests for experimental and testing use of diesel-
3 powered equipment in underground coal mines prior to promul-
4 gation of initial rules in accordance with subsections (b), (c),
5 (d), (e), (f) and (g), section three hundred ten of this article.
6 Final approval of a site-specific request may be approved only
7 upon a majority vote of all six members of the commission. All
8 six members must be present when a vote is taken.

**§22A-2A-310. Duties of commission following promulgation of
initial rules.**

1 (a) After the promulgation of the initial rules, the commis-
2 sion shall have as its primary duties the implementation of this
3 article and the evaluation and adoption of state of the art
4 technology and methods, reflected in engines and engine
5 components, emission control equipment and procedures, that

6 when applied to diesel-powered underground mining machinery
7 shall reasonably reduce or eliminate diesel exhaust emissions
8 and enhance protections of the health and safety of miners. The
9 technology and methods adopted by the commission shall have
10 been demonstrated to be reliable. In making a decision to adopt
11 new technology and methods, the commission shall consider
12 the highest achievable measures of protection for miners' health
13 and safety through available technology, engineering controls
14 and performance requirements and shall further consider the
15 cost, availability, adaptability and suitability of any available
16 technology, engineering controls and performance requirements
17 as they relate to the use of diesel equipment in underground
18 coal mines. Any state of the art technology or methods adopted
19 by the commission shall not reduce or compromise the level of
20 health and safety protection of miners.

21 (b) Upon application of a coal mine operator, the commis-
22 sion shall consider site-specific requests for the use of diesel
23 equipment in underground coal mines and for the use of
24 alternative diesel-related health and safety technologies and
25 methods. The commission's action on applications submitted
26 under this subsection shall be on a mine-by-mine basis. Upon
27 receipt of a site-specific application, the commission shall
28 conduct an investigation, which investigation shall include
29 consultation with the mine operator and the authorized repre-
30 sentatives of the miners at the mine. Authorized representatives
31 of the miners shall include a mine health and safety committee
32 elected by miners at the mine, a person or persons employed by
33 an employee organization representing miners at the mine or a
34 person or persons authorized as the representative or representa-
35 tives of miners of the mine in accordance with MSHA regula-
36 tions at 30 C.F.R. Pt. 40 (relating to representative of miners).
37 Where there is no authorized representative of the miners, the
38 commission shall consult with a reasonable number of miners
39 at the mine. Upon completion of the investigation, the commis-
40 sion may approve the application for the site-specific request:
41 *Provided*, That an application for a site-specific request under

42 this subsection may be approved only upon a majority vote of
43 all six members of the commission. All six members must be
44 present when a vote is taken.

45 (1) Within one hundred eighty days of receipt of an
46 application for use of alternative technologies or methods, the
47 commission shall complete its investigation. The time period
48 may be extended with the consent of the applicant.

49 (2) The commission shall have thirty days in which to
50 render a final decision approving or rejecting the application.

51 (3) The commission members shall not approve an applica-
52 tion made under this section if, at the conclusion of the investi-
53 gation, the commission members have made a determination
54 that the use of the alternative technology or method will reduce
55 or compromise the level of health and safety protection of
56 miners.

57 (4) The written approval of an application for the use of
58 alternative technologies or methods shall include the results of
59 the commission's investigation and describe the specific
60 conditions of use for the alternative technology or method.

61 (5) The written decision to reject an application for the use
62 of alternative technologies or methods shall include the results
63 of the commission's investigation and shall outline in detail the
64 basis for the rejection.

65 (c) The commission shall establish conditions for the use of
66 diesel-powered equipment in shaft and slope construction
67 operations at coal mines.

68 (d) In performing its functions, the commission shall have
69 access to the services of the board of coal mine health and
70 safety. The board shall make clerical support and assistance
71 available to enable the commission to carry out its duties.

72 (e) Any action taken by the commission to either approve
73 or reject the use of an alternative technology or method, or
74 establish conditions under subsection (c) of this section, shall
75 be final and binding and not subject to further review except
76 where a decision by the commission may be deemed to be an
77 abuse of discretion or contrary to law. If any party affected by
78 a decision of the commission believes that the decision is an
79 abuse of discretion or contrary to law, that party may file a
80 petition for review with the circuit court of Kanawha County in
81 accordance with the provisions of the administrative procedures
82 act relating to judicial review of governmental determinations.
83 The court, in finding that any decision made by the commission
84 is an abuse of discretion or contrary to law, shall vacate and, if
85 appropriate, remand the case.

86 (f) The powers and duties of the commission shall be
87 limited to the matters regarding the use of diesel-powered
88 equipment in underground coal mines.

89 (g) Appropriations for the funding of the commission and
90 to effectuate the purposes of this article shall be made to a
91 budget account hereby established for that purpose in the
92 general revenue fund.

CHAPTER 198

**(H. B. 2901 — By Delegates Caputo, Butcher, Tucker,
Kuhn, Frederick, Fletcher and Coleman)**

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article six, chapter
twenty-two-a of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, relating to membership of the board of coal mine health and safety; and setting forth new provisions regarding the method and nomination of members.

Be it enacted by the Legislature of West Virginia:

That section three, article six, 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 6. BOARD OF COAL MINE HEALTH AND SAFETY.

§22A-6-3. Board continued; membership; method of nomination and appointment; meetings; vacancies; quorum.

1 (a) The board of coal mine health and safety, heretofore
2 established, is continued as provided by this article. The board
3 consists of seven members who are residents of this state, and
4 who are appointed as hereinafter specified in this section:

5 (1) The governor shall appoint, by and with the advice and
6 consent of the Senate, three members to represent the viewpoint
7 of those operators in this state. When such members are to be
8 appointed, the governor shall request from the major trade
9 association representing operators in this state a list of three
10 nominees for each such position on the board. All such nomi-
11 nees shall be persons with special experience and competence
12 in health and safety. There shall be submitted with such list a
13 summary of the qualifications of each nominee. If the full lists
14 of nominees are submitted in accordance with the provisions of
15 this subdivision, the governor shall make the appointments
16 from the persons so nominated. For purposes of this subdivi-
17 sion, the major trade association representing operators in this
18 state is that association which represents operators accounting
19 for over one half of the coal produced in mines in this state in
20 the year prior to the year in which the appointment is to be
21 made.

22 (2) The governor shall appoint, by and with the advice and
23 consent of the Senate, three members who can reasonably be
24 expected to represent the viewpoint of the working miners of
25 this state. When members are to be appointed, the governor
26 shall request from the major employee organization represent-
27 ing coal miners within this state a list of three nominees for
28 each position on the board. The highest ranking official within
29 the major employee organization representing coal miners
30 within this state shall submit a list of three nominees for each
31 such position on the board. The nominees shall have a back-
32 ground in health and safety. The governor shall make the
33 appointments from the requested list of nominees.

34 (3) All appointments made by the governor under the
35 provisions of subdivisions (1) and (2), of this subsection shall
36 be with the advice and consent of the Senate.

37 (4) The seventh member of the board is the director of the
38 office of miners' health, safety and training, or his or her
39 designee, who serves as chair of the board as an ex officio
40 nonvoting member, except that the director may vote if there is
41 a tie vote when the board is acting pursuant to subsection (e),
42 section four of this article or subdivision (3), subsection (f),
43 section seven of this article. The director shall furnish to the
44 board such secretarial, clerical, technical, research and other
45 services as are necessary to the conduct of the business of the
46 board, not otherwise furnished by the board.

47 (b) Members serving on the board on the effective date of
48 this article may continue to serve until the expiration of their
49 terms. Thereafter, members shall be nominated and appointed
50 in the manner provided for in this section and shall serve for a
51 term of three years. Members are eligible for reappointment.

52 (c) On or after the first day of January, two thousand two,
53 the governor shall appoint, subject to the approval of a majority

54 of the members of the board appointed under subdivisions (1)
55 and (2), subsection (a) of this section, a health and safety
56 administrator in accordance with the provisions of section six
57 of this article, who shall certify all official records of the board.
58 The health and safety administrator shall be a full-time officer
59 of the board of coal mine health and safety with the duties
60 provided for in section six of this article. The health and safety
61 administrator shall have such education and experience as the
62 governor deems necessary to properly investigate areas of
63 concern to the board in the development of rules governing
64 mine health and safety. The governor shall appoint as health
65 and safety administrator a person who has an independent and
66 impartial viewpoint on issues involving mine safety. The health
67 and safety administrator shall be a person who has not been
68 during the two years immediately preceding appointment, and
69 is not during his or her term, an officer, trustee, director,
70 substantial shareholder, contractor, consultant or employee of
71 any coal operator, or an employee or officer of an employee
72 organization or a spouse of any such person. The health and
73 safety administrator shall have the expertise to draft proposed
74 rules and shall prepare such rules as are required by this code
75 and on such other areas as will improve coal mine health and
76 safety.

77 (d) The board shall meet at least once during each calendar
78 month, or more often as may be necessary, and at other times
79 upon the call of the chair, or upon the request of any three
80 members of the board. Under the direction of the board, the
81 health and safety administrator shall prepare an agenda for each
82 board meeting giving priority to the promulgation of rules as
83 may be required from time to time by this code, and as may be
84 required to improve coal mine health and safety. The health and
85 safety administrator shall provide each member of the board
86 with notice of the meeting and the agenda as far in advance of
87 the meeting as practical, but in any event, at least five days
88 prior thereto. No meeting of the board shall be conducted unless

89 said notice and agenda are given to the board members at least
90 five days in advance, as provided herein, except in cases of
91 emergency, as declared by the chair, in which event members
92 shall be notified of the board meeting and the agenda in a
93 manner to be determined by the chair: *Provided*, That upon
94 agreement of a majority of the quorum present, any scheduled
95 meeting may be ordered recessed to another day certain without
96 further notice of additional agenda.

97 When proposed rules are to be finally adopted by the board,
98 copies of such proposed rules shall be delivered to members not
99 less than five days before the meeting at which such action is to
100 be taken. If not so delivered, any final adoption or rejection of
101 rules shall be considered on the second day of a meeting of the
102 board held on two consecutive days, except that by the concur-
103 rence of at least four members of the board, the board may
104 suspend this rule of procedure and proceed immediately to the
105 consideration of final adoption or rejection of rules. When a
106 member fails to appear at three consecutive meetings of the
107 board or at one half of the meetings held during a one-year
108 period, the health and safety administrator shall notify the
109 member and the governor of such fact. Such member shall be
110 removed by the governor unless good cause for absences is
111 shown.

112 (e) Whenever a vacancy on the board occurs, nominations
113 and appointments shall be made in the manner prescribed in this
114 section: *Provided*, That in the case of an appointment to fill a
115 vacancy, nominations of three persons for each such vacancy
116 shall be requested by and submitted to the governor within
117 thirty days after the vacancy occurs by the major trade associa-
118 tion or major employee organization, if any, which nominated
119 the person whose seat on the board is vacant. The vacancy shall
120 be filled by the governor within thirty days of his or her receipt
121 of the list of nominations.

122 (f) A quorum of the board is five members which shall
123 include the director of the office of miners' health, safety and
124 training, or his or her designee, at least two members represent-

125 ing the viewpoint of operators and at least two members
126 representing the viewpoint of the working miners, and the board
127 may act officially by a majority of those members who are
128 present, except that no vote of the board may be taken unless all
129 seven members are present.

CHAPTER 199

(H. B. 2440— By Delegates Mahan, Coleman, Pino,
C. White, Faircloth, Smirl and Stemple)

[Passed April 11, 2001; 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-four-a, relating to disposal of abandoned motor vehicles, junked motor vehicles, and abandoned or inoperative household appliances; defining terms; prohibiting abandonment of motor vehicles, parts of motor vehicles or inoperative household appliances; establishing penalties; authorizing law-enforcement agencies to take custody of abandoned motor vehicles, junked motor vehicles, parts of motor vehicles and inoperable household appliances; authorizing law-enforcement agencies to hire or contract with others to store and dispose of abandoned motor vehicles, junked motor vehicles, parts of motor vehicles and inoperable household appliances; requiring notice to owners and lienholders of record before disposing of abandoned or junked motor vehicles; allowing owners and lienholders to reclaim abandoned or junked motor vehicles; establishing requirements for reclaiming abandoned or junked motor vehicles; providing that failure to reclaim an abandoned or junked motor vehicle is waiver of all right, title and

interest to the vehicle; authorizing sale of abandoned or junked motor vehicles; authorizing disposal of vehicles abandoned at automobile dealerships and repair shops; requiring salvage yards and demolishers to dispose of abandoned vehicles within six months of receiving the vehicles or pay title fees and taxes; requiring sale of inoperative or abandoned household appliances; authorizing payment of expenses incurred in taking possession, storage and sale of abandoned or junked motor vehicles and inoperative or abandoned household appliances; requiring any funds remaining after payment of expenses be held for ninety days to allow owner to claim the funds; requiring deposit of all unclaimed funds into the road fund; and providing for injunctive and other relief for violation of this article.

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-four-a, to read as follows:

**ARTICLE 24A. DISPOSAL OF ABANDONED MOTOR VEHICLES,
JUNKED MOTOR VEHICLES, AND ABANDONED OR
INOPERATIVE HOUSEHOLD APPLIANCES.**

§17-24A-1. Definitions.

§17-24A-2. Abandonment of motor vehicle prohibited; inoperative household appliances prohibited in certain places; penalty.

§17-24A-3. Authority to take possession of abandoned motor vehicles, junked motor vehicles, and inoperative household appliances.

§17-24A-4. Abandoned or junked motor vehicles; notification to motor vehicle owner and lienholder; charges and fees; exceptions.

§17-24A-5. Disposal of abandoned motor vehicles, junked motor vehicles, and inoperative or abandoned household appliances.

§17-24A-6. Proceeds from sale of abandoned motor vehicles, junked motor vehicles, and inoperative household appliances.

§17-24A-7. Injunctive relief; additional remedy.

§17-24A-1. Definitions.

1 Unless the context clearly indicates a different meaning, as
2 used in this article:

3 (1) "Commissioner" means the commissioner of the
4 division of highways or his or her designee.

5 (2) "Abandoned household appliance" means a refrigerator,
6 freezer, range, stove, automatic dishwasher, clothes washer,
7 clothes dryer, trash compactor, television set, radio, air condi-
8 tioning unit, commode, bed springs, mattress or other furniture,
9 fixtures or appliances to which no person claims ownership and
10 which is not in an enclosed building, a licensed salvage yard or
11 the actual possession of a demolisher.

12 (3) "Abandoned motor vehicle" means any motor vehicle,
13 or major part thereof, which is inoperative and which has been
14 abandoned on public property for any period of time over five
15 days, other than in an enclosed building or in a licensed salvage
16 yard or at the business establishment of a demolisher; or any
17 motor vehicle, or major part thereof, which has remained on
18 private property without consent of the owner or person in
19 control of the property for any period of time over five days; or
20 any motor vehicle, or major part thereof, which is unattended,
21 discarded, deserted and unlicensed and is not in an enclosed
22 building, a licensed salvage yard or the actual possession of a
23 demolisher: *Provided*, That a motor vehicle, or major part
24 thereof, shall not be considered an abandoned motor vehicle if:
25 (a) The owner of the motor vehicle is storing the motor vehicle
26 on the owner's property; (b) the motor vehicle is being stored
27 for the purpose of using its parts on other motor vehicles owned
28 by the owner; (c) the owner owns other motor vehicles similar
29 to the motor vehicle being stored; and (d) the owner is a
30 business licensed to do business in the state of West Virginia
31 and not in the primary business of offering motor vehicles or
32 parts thereof for sale.

33 (4) "Demolisher" means any person licensed by the
34 commissioner of the division of highways whose business, to
35 any extent or degree, is to convert a motor vehicle or any part
36 thereof or an inoperative household appliance into processed
37 scrap or scrap metal or into saleable parts or otherwise to wreck
38 or dismantle vehicles or appliances.

39 (5) "Enclosed building" means a structure surrounded by
40 walls or one continuous wall and having a roof enclosing the
41 entire structure and includes a permanent appendage thereto.

42 (6) "Enforcement agency" means any of the following or
43 any combination of the following:

44 (a) Public law-enforcement officers of this state, including
45 conservation officers;

46 (b) Public law-enforcement officers of any county, city or
47 town within this state; and

48 (c) The commissioner of the division of highways, his or
49 her duly authorized agents and employees.

50 (7) "Inoperative household appliance" means a refrigerator,
51 freezer, range, stove, automatic dishwasher, clothes washer,
52 clothes dryer, trash compactor, television set, radio, air condi-
53 tioning unit, commode, bed springs, mattress or other furniture,
54 fixture or appliance which by reason of mechanical or physical
55 defects can no longer be used for its intended purpose and
56 which is either not serving a functional purpose or use or is not
57 in an enclosed building, a licensed salvage yard or the actual
58 possession of a demolisher.

59 (8) "Junked motor vehicle" means a motor vehicle, or any
60 part thereof which: (a) Is discarded, wrecked, ruined, scrapped
61 or dismantled; (b) cannot pass the state inspection required by
62 article sixteen, chapter seventeen-c of this code; and (c) is either

63 not serving a functional purpose or use or is not in an enclosed
64 building, a licensed salvage yard or the actual possession of a
65 demolisher: *Provided*, That a motor vehicle, or major part
66 thereof, shall not be considered a junked motor vehicle if:
67 (a) The owner of the motor vehicle is storing the motor vehicle
68 on the owner's property; (b) the motor vehicle is being stored
69 for the purpose of using its parts on other motor vehicles owned
70 by the owner; (c) the owner owns other motor vehicles similar
71 to the motor vehicle being stored; and (d) the owner is a
72 business licensed to do business in the state of West Virginia
73 and not in the primary business of offering motor vehicles or
74 parts thereof for sale.

75 (9) "Licensed salvage yard" means a salvage yard licensed
76 under article twenty-three of this chapter.

77 (10) "Motor vehicle" means a vehicle which is or was self-
78 propelled, including, but not limited to, automobiles, trucks,
79 buses and motorcycles.

80 (11) "Person" means a natural person, corporation, firm,
81 partnership, association or society and the plural as well as the
82 singular.

§17-24A-2. Abandonment of motor vehicle prohibited; inoperative household appliances prohibited in certain places; penalty.

1 (a) No person shall, within this state, abandon a motor
2 vehicle or major part thereof upon the right-of-way of any
3 public highway, upon any other public property or upon any
4 private property without the consent of the owner or person in
5 control of the property, or upon property owned or controlled
6 by that person, unless it be at a licensed salvage yard or at the
7 business establishment of a demolisher, or a business licensed
8 to do business in the state of West Virginia and not in the
9 primary business of offering motor vehicles or parts thereof for

10 sale. Any person who violates any provision of this section
11 shall be guilty of a misdemeanor and, upon conviction thereof,
12 shall be sentenced and fined as set forth below.

13 (b) No person shall, within this state, place or abandon any
14 inoperative household appliance upon the right-of-way of any
15 public highway or upon any other public property; nor shall any
16 person, within this state, place or abandon any inoperative
17 household appliance upon any private property unless it be at a
18 licensed salvage yard, solid waste facility, other business
19 authorized to accept such solid waste or at the business estab-
20 lishment of a demolisher. Any person who violates any provi-
21 sion of this section shall be guilty of a misdemeanor and, upon
22 conviction thereof, shall be sentenced and fined as set forth
23 below.

24 (c) Any person who is guilty of a misdemeanor as described
25 in this section and the abandoned motor vehicle, junked motor
26 vehicle, or inoperative household appliance does not exceed one
27 hundred pounds in weight or twenty-seven cubic feet in size is
28 subject to a fine of not less than fifty dollars nor more than one
29 thousand dollars or, in the discretion of the court, sentenced to
30 perform community service by cleaning up litter from any
31 public highway, road, street, alley or any other public park or
32 public property or waters of the state, as designated by the
33 court, for not less than eight nor more than sixteen hours, or
34 both.

35 (d) Any person who is guilty of a misdemeanor as described
36 in this section and the abandoned motor vehicle, junked motor
37 vehicle or inoperative household appliance is greater than one
38 hundred pounds in weight or twenty-seven cubic feet in size,
39 but less than five hundred pounds in weight or two hundred
40 sixteen cubic feet, is subject to a fine of not less than five
41 hundred dollars nor more than two thousand dollars or, in the
42 discretion of the court, may be sentenced to perform community

43 service by cleaning up litter from any public highway, road,
44 street, alley or any other public park or public property or
45 waters of the state, as designated by the court, for not less than
46 sixteen nor more than thirty-two hours, or both.

47 (e) Any person who is guilty of a misdemeanor as described
48 in this section and the abandoned motor vehicle, junked motor
49 vehicle or inoperative household appliance is greater than five
50 hundred pounds in weight or two hundred sixteen cubic feet in
51 size is subject to a fine not less than twenty-five hundred dollars
52 or not more than twenty-five thousand dollars or confinement
53 in a county or regional jail for not more than one year, or both.
54 In addition, the violator may be guilty of creating or contribut-
55 ing to an open dump as defined in section two, article fifteen,
56 chapter twenty-two of this code and subject to the enforcement
57 provisions of section fifteen of said article.

58 (f) Any person convicted of a second or subsequent
59 violation of this section is subject to double the authorized
60 range of fines and community service for the subsection
61 violated.

62 (g) The sentence of litter cleanup shall be verified by
63 conservation officers from the division of natural resources or
64 environmental inspectors from the division of environmental
65 protection. Any defendant receiving the sentence of litter
66 cleanup shall provide within a time to be set by the court
67 written acknowledgment from a conservation officer or
68 environmental inspector that the sentence has been completed
69 and the litter has been disposed of lawfully.

70 (h) Any person who has been found by the court to have
71 willfully failed to comply with the terms of a litter cleanup
72 sentence imposed by the court pursuant to this section is subject
73 to, at the discretion of the court, double the amount of the
74 original fines and community service penalties.

§17-24A-3. Authority to take possession of abandoned motor vehicles, junked motor vehicles, and inoperative household appliances.

1 Any enforcement agency which has knowledge of or
2 discovers or finds any abandoned motor vehicle, junked motor
3 vehicle or inoperative household appliance on either public or
4 private property may take it into its custody and possession. For
5 that purpose, the enforcement agency may employ its own
6 personnel, equipment and facilities or hire persons, equipment
7 and facilities for the purpose of removing, preserving and
8 storing abandoned motor vehicles, junked motor vehicles or
9 inoperative household appliances: *Provided*, That before taking
10 any abandoned motor vehicle or junked motor vehicle into
11 custody and possession from private property, the enforcement
12 agency shall give the private property owner and the owner of
13 the motor vehicle, if ascertainable, a thirty-day notice by
14 registered or certified mail that the action will be taken unless
15 the motor vehicle is restored to a functional use.

§17-24A-4. Abandoned or junked motor vehicles; notification to motor vehicle owner and lienholder; charges and fees; exceptions.

1 (a) The enforcement agency which takes into custody and
2 possession an abandoned motor vehicle or junked motor vehicle
3 shall, within fifteen days after taking custody and possession
4 thereof, notify the last-known registered owner of the motor
5 vehicle and all lienholders of record that the motor vehicle has
6 been taken into custody and possession, the notification to be
7 by registered or certified mail, return receipt requested. The
8 notice shall:

9 (1) Contain a description of the motor vehicle, including the
10 year, make, model, manufacturer's serial or identification
11 number or any other number which may have been assigned to

12 the motor vehicle by the commissioner of motor vehicles and
13 any distinguishing marks;

14 (2) Set forth the location of the facility where the motor
15 vehicle is being held and the location where the motor vehicle
16 was taken into custody and possession;

17 (3) Inform the owner and any lienholders of record of their
18 right to reclaim the motor vehicle within ten days after the date
19 notice was received by the owner or lienholders, upon payment
20 of all towing, preservation and storage charges resulting from
21 taking and placing the motor vehicle into custody and posses-
22 sion; and

23 (4) State that the failure of the owner or lienholders of
24 record to exercise their right to reclaim the motor vehicle within
25 the ten-day period shall be deemed a waiver by the owner and
26 all lienholders of record of all right, title and interest in the
27 motor vehicle and of their consent to the sale or disposal of the
28 abandoned motor vehicle or junked motor vehicle at a public
29 auction or to a licensed salvage yard or demolisher.

30 (b) If the identity of the last registered owner of the
31 abandoned motor vehicle or junked motor vehicle cannot be
32 determined or if the certificate of registration or certificate of
33 title contains no address for the owner or if it is impossible to
34 determine with reasonable certainty the identity and addresses
35 of all lienholders, notice shall be published as a Class I legal
36 advertisement in compliance with the provisions of article
37 three, chapter fifty-nine of this code, the publication area shall
38 be the county wherein the motor vehicle was located at the time
39 the enforcement agency took custody and possession thereof
40 and the notice shall be sufficient to meet all requirements of
41 notice pursuant to this article. Any notice by publication may
42 contain multiple listings of abandoned motor vehicles and
43 junked motor vehicles. The notice shall be published within

44 fifteen days after the motor vehicle is taken into custody and
45 possession and shall have the same contents required for a
46 notice pursuant to subsection (a) of this section, except that the
47 ten-day period shall run from the date the notice is published as
48 aforesaid.

49 (c) An enforcement agency which hires any person or entity
50 to take into custody and possession an abandoned motor vehicle
51 or junked motor vehicle pursuant to this section shall notify the
52 person or entity hired of the name and address of the registered
53 owner of the motor vehicle, if known, and all lienholders of
54 record, if any, within fifteen days after the vehicle is taken into
55 custody and possession: *Provided*, That the requirements of this
56 subsection shall not apply to motor vehicles for which the
57 registered owner cannot be ascertained by due diligence or
58 investigation.

59 (d) The person or entity hired by an enforcement agency to
60 take into custody or possession an abandoned motor vehicle or
61 junked motor vehicle shall, within thirty days after the posses-
62 sion, notify the registered owner of the vehicle and all
63 lienholders of record, if any, as identified by the enforcement
64 agency pursuant to subsection (c) of this section, by registered
65 mail, return receipt requested, that the motor vehicle has been
66 taken into custody and possession. The notice shall have the
67 same contents required for a notice pursuant to subsection (a)
68 of this section, including the ten-day period the owner or
69 lienholder has to reclaim the motor vehicle. Upon the issuance
70 of the notice, the identified owner of the motor vehicle is liable
71 and responsible for all costs for towing, preservation and
72 storage of the motor vehicle: *Provided*, That failure to issue the
73 notice required by this subsection within thirty days after
74 possession of the motor vehicle relieves the identified owner of
75 the motor vehicle of any liability for charges for towing,
76 preservation and storage in excess of the sum of the first five
77 days of the charges: *Provided, however*, That the requirements

78 of this subsection do not apply to motor vehicles for which the
79 registered owner thereof cannot be ascertained by due diligence
80 or investigation.

81 (e) For an abandoned motor vehicle or junked vehicle
82 having a loan value of two thousand five hundred dollars or
83 less, as ascertained by values placed upon motor vehicles using
84 a standard industry reference book, a person or entity hired by
85 an enforcement agency to tow the abandoned motor vehicle or
86 junked motor vehicle may, if the motor vehicle is not claimed
87 by the owner or a lienholder after notice within the time set
88 forth in subsection (d) of this section or if the identity of the last
89 registered owner of the abandoned motor vehicle or junked
90 motor vehicle cannot be determined or if the certificate of
91 registration or certificate of title contains no address of the
92 owner or if it is impossible to determine with reasonable
93 certainty the identity and address of all lienholders after
94 publication as set forth in subsection (b) of this section, file an
95 application with the division of motor vehicles for a certificate
96 of title and registration which, upon payment of the appropriate
97 fees, shall be issued. The person or entity may then sell the
98 motor vehicle at private sale or public auction.

99 (f) For an abandoned motor or junked motor vehicle having
100 a loan value of two thousand five hundred dollars or less, as
101 ascertained by values placed upon motor vehicles using a
102 standard industry reference book, a licensed motor vehicle
103 dealer, as defined in section one, article one, chapter seventeen-
104 a of this code, or a motor vehicle repair facility may, if a motor
105 vehicle is abandoned on the property or place of business of the
106 dealer or a motor vehicle repair facility and is not claimed by
107 the owner or a lienholder after notice within the time set forth
108 in subsection (d) of this section or if the identity of the last
109 registered owner of the abandoned motor vehicle cannot be
110 determined or if the certificate of registration or certificate of
111 title contains no address of the owner or if it is impossible to

112 determine with reasonable certainty the identity and address of
113 all lienholders after publication as set forth in subsection (b) of
114 this section, file an application with the division of motor
115 vehicles for a certificate of title and registration which, upon
116 payment of the appropriate fees, shall be issued. The dealer or
117 motor vehicle repair facility may then sell the motor vehicle at
118 private sale or public auction.

**§17-24A-5. Disposal of abandoned motor vehicles, junked motor
vehicles, and inoperative or abandoned household
appliances.**

1 (a) If an abandoned motor vehicle or junked motor vehicle
2 is not reclaimed as provided for in section four of this article,
3 the enforcement agency in possession of the abandoned motor
4 vehicle or junked motor vehicle shall sell it either at a public
5 auction or to a licensed salvage yard or demolisher. The
6 purchaser of the motor vehicle shall take title to the motor
7 vehicle free and clear of all liens and claims of ownership and
8 shall receive a sales receipt from the enforcement agency which
9 disposed of the motor vehicle. The sales receipt at the sale shall
10 be sufficient title only for purposes of transferring the motor
11 vehicle to a licensed salvage yard or to a demolisher for
12 demolition, wrecking or dismantling and no further titling of
13 the motor vehicle shall be necessary by either the purchaser at
14 the auction, the licensed salvage yard or the demolisher, who
15 shall be exempt from the payment of any fees and taxes
16 required under article three, chapter seventeen-a of this code:
17 *Provided*, That the purchaser at the auction must place the
18 motor vehicle in the possession of a licensed salvage yard or
19 demolisher within twenty days from the date he or she pur-
20 chased the motor vehicle and the licensed salvage yards or
21 demolisher must demolish, wreck or dismantle the motor
22 vehicle within six months after taking possession of the motor
23 vehicle and if the licensed salvage yard or demolisher does not,
24 the licensed salvage yard or demolisher shall be required to pay

25 all fees and taxes required under article three, chapter seven-
26 teen-a of this code.

27 (b) When an enforcement agency has in its custody and
28 possession inoperative or abandoned household appliances
29 collected in accordance with section seven of this article it shall
30 sell the property from time to time at public auction or to a
31 licensed salvage yard or demolisher.

**§17-24A-6. Proceeds from sale of abandoned motor vehicles,
junked motor vehicles, and inoperative household
appliances.**

1 From the proceeds of any sale, the enforcement agency
2 which sold the abandoned motor vehicle, junked motor vehicle
3 or inoperative household appliance shall reimburse itself for
4 any expenses it may have incurred in removing, towing,
5 preserving and storing said property and the expenses of
6 conducting any auction and any notice and publication expenses
7 incurred pursuant to this article.

8 Any remainder from the proceeds of the sale of an aban-
9 doned motor vehicle or junked motor vehicle after payment of
10 expenses shall be held for the last registered owner of the motor
11 vehicle or any lienholder for ninety days, after which time, if no
12 owner or lienholder claims the remainder, it shall be deposited
13 in the state road fund.

§17-24A-7. Injunctive relief; additional remedy.

1 In addition to all other remedies provided for in this article,
2 the attorney general of this state, the prosecuting attorney of
3 any county where any violation of any provision of this article
4 occurs or any citizen, resident or taxpayer of the county where
5 any violation of any provision of this article occurs may apply
6 to the circuit court, or the judge thereof in vacation, of the
7 county where the alleged violation occurred for an injunction to

8 restrain, prevent or abate the maintenance and storage of
9 abandoned motor vehicles, junked motor vehicles or inoperative
10 household appliances, in violation of any provision of this
11 article.

CHAPTER 200

(Com. Sub. for H. B. 2256 — By Delegates C. White,
Faircloth, Smirl, Givens and Coleman)

[Passed April 12, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section eight, article two-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections seven and eleven of said article, all relating to the authority of the division of motor vehicles to disclose motor vehicle records to persons for purposes of marketing and solicitations.

Be it enacted by the Legislature of West Virginia:

That section eight, article two-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections seven and eleven of said article two-a, be amended and reenacted, all to read as follows:

ARTICLE 2A. UNIFORM MOTOR VEHICLES RECORDS DISCLOSURE ACT.

§17A-2A-7. Permitted disclosures.

§17A-2A-11. Resale or redisclosure.

§17A-2A-7. Permitted disclosures.

1 The division or its designee shall disclose personal informa-
2 tion as defined in section three of this article to any person who
3 requests the information if the person: (a) Has proof of his or
4 her identity; and (b) verifies that the use of the personal
5 information will be strictly limited to one or more of the
6 following:

7 (1) For use by any governmental agency, including any
8 court or law-enforcement agency, in carrying out its functions,
9 or any private person or entity acting on behalf of a governmen-
10 tal agency in carrying out its functions;

11 (2) For use in connection with matters of motor vehicle or
12 driver safety and theft, motor vehicle product alterations, recalls
13 or advisories, performance monitoring of motor vehicles, motor
14 vehicle parts and dealers, motor vehicle market research
15 activities including survey research and removal of nonowner
16 records from the original owner records of motor vehicle
17 manufacturers;

18 (3) For use in the normal course of business by a legitimate
19 business or its agents, employees or contractors:

20 (A) For the purpose of verifying the accuracy of personal
21 information submitted by the individual to the business or its
22 agents, employees or contractors; and

23 (B) If the information as submitted is not correct or is no
24 longer correct, to obtain the correct information, but only for
25 the purposes of preventing fraud by, pursuing legal remedies
26 against or recovering on a debt or security interest against the
27 individual;

28 (4) For use in conjunction with any civil, criminal, adminis-
29 trative or arbitral proceeding in any court or governmental
30 agency or before any self-regulatory body, including the service
31 of process, investigation in anticipation of litigation, the

32 execution or enforcement of judgments and orders or pursuant
33 to an order of any court;

34 (5) For use in research and producing statistical reports, so
35 long as the personal information is not published, redisclosed
36 or used to contact individuals;

37 (6) For use by any insurer or insurance support organization
38 or by a self-insured entity, its agents, employees or contractors
39 in connection with claim investigation activities, antifraud
40 activities, rating or underwriting;

41 (7) For use in providing notice to the owners of towed or
42 impounded vehicles;

43 (8) For use by any licensed private investigator agency or
44 licensed security service for any purpose permitted under this
45 section;

46 (9) For use by an employer or its agent or insurer to obtain
47 or verify information relating to a holder of a commercial
48 driver's license that is required under the Commercial Motor
49 Vehicle Safety Act of 1986 (49 U.S.C. App. 2710 et seq.);

50 (10) For use in connection with the operation of private toll
51 transportation facilities;

52 (11) For bulk distribution for surveys, marketing or solicita-
53 tions after the division has implemented methods and proce-
54 dures to ensure that the information will be used, rented or sold
55 solely for bulk distribution for surveys, marketing and solicita-
56 tions, and only if the person whose information will be used has
57 authorized the use of his or her name and address for those
58 purposes; and

59 (12) For any other use specifically authorized by law that
60 is related to the operation of a motor vehicle or public safety.

§17A-2A-11. Resale or redisclosure.

1 (a) An authorized recipient of personal information, except
2 a recipient under subsection (11), section seven of this article
3 may resell or redisclose the information for any use permitted
4 under said section seven except the use for bulk distribution for
5 surveys, marketing or solicitations as provided in subsection
6 (11), section seven of this article.

7 (b) An authorized recipient of personal information for bulk
8 distribution for surveys, marketing or solicitations, under
9 subsection (11), section seven of this article may resell or
10 redisclose personal information only in accordance with the
11 terms of said subsection allowing surveys for marketing and
12 solicitations to be directed only to those individuals who have
13 authorized the use of their name and address for those purposes.

14 (c) Any authorized recipient who resells or rediscloses
15 personal information shall: (1) Maintain for a period of not less
16 than five years, records as to the person or entity receiving
17 information, and the permitted use for which it was obtained;
18 and (2) make the records available for inspection by the
19 division, upon request.

CHAPTER 201

(S. B. 395 — By Senators Unger and Snyder)

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-a, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing counties to require proof of payment of any applicable emergency

ambulance fees owed prior to the issuance of a certificate of registration and renewal of registration for a motor vehicle.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-3a. Payment of personal property taxes and emergency ambulance fees prerequisite to registration or renewal; duties of assessors; schedule of automobile values.

1 (a) Certificates of registration and renewal of registration
2 of any vehicle or registration plates for any vehicle may not be
3 issued or furnished by the division of motor vehicles, or any
4 other officer charged with the duty, unless the applicant for the
5 certificate or registration plate, except an applicant exempt from
6 payment of registration fees under section eight, article ten of
7 this chapter, has furnished the receipt provided for in this
8 section to show full payment of:

9 (1)(A) The personal property taxes for the calendar year
10 which immediately precedes the calendar year in which
11 application is made on all vehicles which were registered with
12 the division of motor vehicles in the applicant's name on the tax
13 day for the former calendar year; and

14 (B) All emergency ambulance fees owed pursuant to
15 section seventeen, article fifteen, chapter seven of this code, at
16 the time the receipt is prepared, except for any of the fees that
17 are not yet past due: *Provided*, That any county which does not
18 impose emergency ambulance fees or which chooses not to
19 show emergency ambulance fees on the personal property tax

20 receipt may issue a receipt without complying with paragraph
21 (B), subdivision (1) of this subsection and the commissioner of
22 motor vehicles may issue or renew registration without regard
23 to such fees.

24 (2)(A) When an applicant has chosen the optional two-year
25 registration system provided for in section sixteen of this
26 article, the personal property taxes for the two calendar years
27 immediately preceding the calendar year in which application
28 is made on all vehicles which were registered with the division
29 of motor vehicles in the applicant's name on the tax day for the
30 former calendar year; and

31 (B) All emergency ambulance fees owed pursuant to
32 section seventeen, article fifteen, chapter seven of this code, at
33 the time the receipt is prepared, except for any of the fees that
34 are not yet past due: *Provided*, That any county which does not
35 impose emergency ambulance fees or which chooses not to
36 show emergency ambulance fees on the personal property tax
37 receipt may issue a receipt without complying with paragraph
38 (B), subdivision (1) of this subsection and the commissioner of
39 motor vehicles may issue or renew registration without regard
40 to such fees.

41 (b) If the applicant contends that any registered vehicle was
42 not subject to personal property taxation for that year or that he
43 or she does not owe any emergency ambulance fees if a receipt
44 for fees are required by the county, he or she shall furnish the
45 information and evidence as the commissioner of motor
46 vehicles may require to substantiate his or her contention.

47 (c) The assessor shall require any person having a duty to
48 make a return of property for taxation to him or her to furnish
49 information identifying each vehicle subject to the registration
50 provisions of this chapter. When the property taxes on any
51 vehicle have been paid, the officer to whom the payment was
52 made shall deliver to the person paying the taxes a written or
53 printed receipt for the payment and shall retain for his or her
54 records a duplicate of the receipt. It is the duty of the assessor

55 and sheriff, respectively, to see that the assessment records and
56 the receipts contain information adequately identifying the
57 vehicle as registered under the provisions of this chapter. The
58 officer receiving payment shall sign each receipt in his or her
59 own handwriting.

60 (d) Each receipt given to a taxpayer for payment of per-
61 sonal property taxes on a vehicle may indicate on the receipt
62 whether the taxpayer has paid all emergency ambulance fees
63 owed pursuant to section seventeen, article fifteen, chapter
64 seven of this code at the time the receipt is prepared, except for
65 any of the fees that are not yet past due: *Provided*, That the
66 county shall include on the same notice of personal property
67 taxes due the additional amount due for all emergency ambu-
68 lance fees.

69 (e) The state tax commissioner shall annually compile a
70 schedule of automobile values, based on the lowest values
71 shown in a nationally accepted used car guide. The state tax
72 commissioner shall furnish the schedule to each assessor and it
73 shall be used by him or her as a guide in placing the assessed
74 values on all automobiles in his or her county.

CHAPTER 202

(S. B. 511 — By Senators Bowman and McKenzie)

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-b, relating to assessors giving notice regarding motor vehicles unregistered in the state; establishing factors to consider to

determine residency status of vehicle owner; and providing referral by assessor to county prosecuting attorney in certain circumstances.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-3b. Motor vehicles believed illegally unregistered; assessor to make verification.

1 If, on information and belief the assessor has reason to
2 believe that a motor vehicle has not been properly registered in
3 this state in violation of the provisions of section one of this
4 article, he or she shall give notice by posting on the vehicle a
5 notice advising the owner of the vehicle to contact the office of
6 the assessor within fifteen days to verify that the owner is not
7 a resident of the state of West Virginia. Factors to be considered
8 in determining whether or not such person is a resident of this
9 state include, but are not limited to, the following:

10 (1) The person is registered to vote in this state;

11 (2) The person enrolls the person's child or children to be
12 educated in an elementary or secondary school in this state or
13 has complied with applicable provisions of this code indicating
14 an intent to home school the person's child or children in this
15 state;

16 (3) The person is receiving public assistance from this state;

17 (4) The person resides or has continuously remained in this
18 state for a period exceeding thirty days, except for infrequent
19 brief absences;

20 (5) The person has accepted employment or engages in any
21 trade, profession or occupation within this state, except that this
22 does not include a person who is commuting from the person's
23 residence in another state or whose employment is seasonal or
24 temporary, not exceeding thirty days;

25 (6) The person has filed for a homestead tax exemption on
26 property in this state;

27 (7) The person subscribes to public utilities in this state in
28 his or her own name;

29 (8) The person receives his or her mail in this state pursuant
30 to verification from the United States postal service.

31 In the event the assessor receives no response from the
32 posting, the assessor will refer the matter to the prosecuting
33 attorney. If it is determined that the vehicle has not been
34 properly registered in this state, the owner of the vehicle is in
35 violation of the provisions of this article and the person will be
36 subject to the criminal sanctions contained in section one of this
37 article.

CHAPTER 203

(Com. Sub. for H. B. 2961 — By Delegates Warner and Shelton)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, four, six, eight and eighteen, article six, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section two-a, all relating to the establishment of a dealer recovery fund; setting forth legislative findings; creating a dealer recovery fund control board; promulgation of rules; providing for an annual dealer recovery fund fee; providing exemptions; requiring surety bonds; and providing for payment of claims.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 6. LICENSING OF DEALERS, WRECKERS OR DISMANTLERS;
SPECIAL PLATES; TEMPORARY PLATES OR MARKERS.**

§17A-6-2. Legislative findings, declaration of public policy and dealer recovery fund.

§17A-6-2a. Dealer recovery fund created.

§17A-6-4. Application for license certificate; insurance; bonds; investigation; information confidential.

§17A-6-6. Refusal or issuance of license certificate; license certificate not transferable.

§17A-6-8. Form and display of license certificate or certified copy thereof; obtaining certified copy of license certificate; bond.

§17A-6-18. Investigation; matters confidential; grounds for suspending or revoking license or imposing fine; suspension and revocation generally.

§17A-6-2. Legislative findings, declaration of public policy and dealer recovery fund.

1 (a) The Legislature hereby determines and finds that in the
2 past some persons engaged in the business of selling new or
3 used motor vehicles, house trailers, trailers, recreational
4 vehicles, motorcycles, or used motor vehicle parts, and in the

5 business of wrecking or dismantling motor vehicles, have not
6 had the necessary qualifications, staff, equipment or facilities
7 to adequately serve the public; that some persons engaged in the
8 businesses have made false and deceptive claims and advertise-
9 ments to the public and have engaged in fraud and other illegal
10 conduct; that certain citizens of this state have sustained
11 financial losses as a result thereof; and that in some of the cases
12 there has been no adequate means to prevent the conduct or
13 protect the interests of the citizens of West Virginia. It is,
14 therefore, declared to be the public policy of this state that the
15 business of new motor vehicle dealer, used motor vehicle
16 dealer, house trailer dealer, trailer dealer, recreational vehicle
17 dealer, motorcycle dealer, used parts dealer, or wrecker or
18 dismantler, affects the general welfare of this state and its
19 citizens; that persons without the necessary qualifications, staff,
20 equipment or facilities to adequately serve the public, and
21 persons not of good character or who have or are likely to
22 attempt to misrepresent their product or engage in fraudulent or
23 other illegal conduct should not engage in these businesses; and
24 that the evils may best be prevented and the interests of the
25 public best served by requiring persons in the businesses to
26 meet the qualifications set forth in this article and to be licensed
27 by the commissioner of motor vehicles as provided in this
28 article.

29 (b) The Legislature further determines and finds that there
30 exists a significant problem when a motor vehicle dealer goes
31 out of business or engages in business practices that cause
32 citizens or businesses of the affected community, as well as this
33 state substantial financial loss. It is, therefore determined, that
34 the creation of a dealer recovery fund is necessary as a remedial
35 measure to allow both the state and the citizens of this state to
36 recover any taxes which have not been properly remitted to the
37 state and to provide financial relief to citizens, businesses and
38 other motor vehicle dealers who have suffered financial harm
39 through the failure of a motor vehicle dealer to properly fulfill

40 its responsibilities such as failure to properly release liens and
41 deliver clear title in motor vehicle transactions.

§17A-6-2a. Dealer recovery fund created.

1 (a) There is hereby created a special fund in the state
2 treasury which is to be designated the "dealer recovery fund."
3 The fund shall consist of certain moneys received from persons
4 engaged in the business of selling new or used motor vehicles,
5 new or used motorcycles, trailers, semi-trailers or recreational
6 vehicles or from grants, gifts, bequests or awards arising out of
7 the settlement or adjudication of a claim. The fund is not to be
8 treated by the auditor and treasurer as part of the general
9 revenue of the state. The fund is to be a special revolving fund
10 paid out upon order of the commissioner of motor vehicles
11 based on the recommendation of the dealer recovery fund
12 control board created in this section, solely for the purposes
13 specified in this section. The commissioner may use up to one
14 percent of funds from the dealer recovery fund for the adminis-
15 trative expenses of operating the dealer recovery fund program.

16 (b) The dealer recovery fund control board shall consist of
17 the commissioner of motor vehicles or his or her designee, the
18 attorney general's designee representing the office of consumer
19 protection and one representative selected by the motor vehicle
20 dealer's advisory board. The commissioner of motor vehicles
21 or his or her designee shall serve as chair and the board shall
22 meet at least once a year during the month of July, and as
23 required by the commissioner. The commissioner may propose
24 rules for promulgation in accordance with article three, chapter
25 twenty-nine-a of this code that are necessary to effectuate the
26 provisions of this section. The commissioner may employ the
27 necessary staff needed to operate the program. The board may
28 prorate the amount paid on claims when the amount of valid
29 claims submitted would exceed thirty-three percent of the fund.
30 However, claims presented by the division of motor vehicles for

31 taxes and fees shall be paid in full. The board may purchase
32 insurance at a cost not to exceed one percent of the fund to
33 cover extraordinary or excess claims from the fund.

34 (c) Every applicant for either an original dealer license or
35 renewal of an existing dealer license of the type enumerated in
36 subsection (a) of this section shall pay, in addition to any other
37 license fee, an annual dealer recovery fund fee of one hundred
38 fifty dollars. All dealers shall continue to maintain a surety
39 bond as required by this article and the dealer recovery fund
40 payment unless exempt by one of the following requirements:

41 (1) Any dealer who, for the three years immediately
42 preceding assessment of the fees, has not had a claim paid
43 against the bond or against the dealer recovery fund, whose
44 license has not been suspended or revoked and who has not
45 been assessed any civil penalties is not required to continue to
46 keep the bond required by this article. However, no dealer can
47 submit a claim against the fund unless it has contributed to the
48 fund for at least three years.

49 (2) If the dealer recovery fund reaches or exceeds the
50 amount of three million dollars as of the first day of July of any
51 year, a dealer who meets the requirements of subdivision (1) of
52 this subsection, is exempt from payment of the annual dealer
53 recovery fund fee. However, if the fund should, as of the first
54 day of April of any year, drop below three million dollars, all
55 dealers, regardless of any previous exemption shall pay the
56 annual dealer recovery fee of one hundred fifty dollars. The
57 exemption prescribed in subdivision (1) of this subsection
58 remains in effect regardless of the status of the fund.

59 (d) The dealer recovery fund control board may consider
60 payment only after any dealer surety bond required pursuant to
61 the provisions of section four of this article has been exhausted.

62 (e) When the fund reaches two hundred fifty thousand
63 dollars, the board shall consider claims for payment.

64 (f) Claims against the fund are not to be made for any act or
65 omission which occurred prior to the first day of July, two
66 thousand two.

67 (g) Claims for payment shall be submitted within six
68 months of the date of sale or the date the division is made aware
69 of the claim.

70 (h) The board shall pay claims in the following order:

71 (1) Claims submitted by the division of motor vehicles for
72 unpaid taxes and fees;

73 (2) Claims submitted by a retail purchaser of a vehicle from
74 a dealer covered by the fund with an undisclosed lien or a retail
75 purchaser of a vehicle from a dealer covered by the fund who
76 finds that the lien on the vehicle traded in has not been satisfied
77 by the selling dealer if the lien satisfaction was a condition of
78 the purchase agreement;

79 (3) Claims submitted by a motor vehicle dealer contributing
80 to the fund, which has purchased a vehicle or vehicles from
81 another dealer covered by the fund with an undisclosed lien; or

82 (4) Claims submitted by a retail purchaser of third party
83 goods or services from a dealer covered by the fund for the
84 unpaid charges when the dealer fails to pay the third party for
85 the goods or services.

86 (i) The maximum claim against the fund for any unpaid lien
87 of a used vehicle is the unpaid balance of the lien up to the loan
88 value of the vehicle as of the date of the sale or other transac-
89 tion as shown by a generally accepted motor vehicle value
90 guide. The maximum claim against the fund for any new or

91 unused vehicle is the amount of the invoice less any amounts
92 rebated or to be rebated to the dealer from the manufacturer.
93 Payment is only to be made to a secured party who agrees to
94 accept payment from the dealer recovery fund and who accepts
95 the payment in full settlement of any claims, and who releases
96 the lien and the title, if applicable, prior to receiving payment.
97 Any dealer who agrees to accept payment from the dealer
98 recovery fund shall release the title prior to receiving payment.

99 (j) On payment by the board to a claimant from the fund,
100 the board shall immediately notify the licensee against whom
101 a claim was paid and request full reimbursement within thirty
102 days of notification. If a dealer fails to fully reimburse the
103 board within the specified period of time, the commissioner
104 shall immediately and without prior hearing revoke the dealer
105 license of dealer against whom the claim was paid. No appli-
106 cant with an unpaid claim is eligible for renewal or relicensure
107 until the full amount of the reimbursement plus interest as
108 determined by the board is paid to the fund. Nothing in this
109 section shall limit the authority of the commissioner to suspend,
110 revoke or levy civil penalties against a dealer, nor shall full
111 repayment of the amount owed to the fund necessarily nullify
112 or modify the effect of any action by the commissioner.

113 (k) Nothing in this section shall limit the right for any
114 person to seek relief though civil action against any other
115 person.

116 (l) The provisions of this section do not apply to those class
117 DTR dealers in the business of selling manufactured housing
118 and covered by the state manufactured housing recovery fund
119 established by the division of labor pursuant to a legislative
120 rule.

**§17A-6-4. Application for license certificate; insurance; bonds;
investigation; information confidential.**

1 (a) Application for any license certificate required by
2 section three of this article shall be made on a form prescribed
3 by the commissioner. There shall be attached to the application
4 a certificate of insurance certifying that the applicant has in
5 force an insurance policy issued by an insurance company
6 authorized to do business in this state insuring the applicant and
7 any other person, as insured, using any vehicle or vehicles
8 owned by the applicant with the express or implied permission
9 of the named insured, against loss from the liability imposed by
10 law for damages arising out of the ownership, operation,
11 maintenance or use of the vehicle or vehicles, subject to
12 minimum limits, exclusive of interest and costs, with respect to
13 each vehicle, as follows: Twenty thousand dollars because of
14 bodily injury to or death of one person in any one accident and,
15 subject to the limit for one person, forty thousand dollars
16 because of bodily injury to or death of two or more persons in
17 any one accident, and ten thousand dollars because of injury to
18 or destruction of property of others in any one accident.

19 (b) In the case of an application for a license certificate to
20 engage in the business of new motor vehicle dealer, used motor
21 vehicle dealer or house trailer dealer, the application shall
22 disclose, but not be limited to, the following:

23 (1) The type of business for which a license certificate is
24 sought;

25 (2) If the applicant is an individual, the full name and
26 address of the applicant and any trade name under which he or
27 she will engage in the business;

28 (3) If the applicant is a copartnership, the full name and
29 address of each partner in the copartnership, the name of the
30 copartnership, its post-office address and any trade name under
31 which it will engage in the business;

32 (4) If the applicant is a corporation, its name, the state of its
33 incorporation, its post-office address and the full name and
34 address of each officer and director of the corporation;

35 (5) The location of each place in this state at which the
36 applicant will engage in the business and whether the business
37 is owned or leased by the applicant;

38 (6) Whether the applicant, any partner, officer or director
39 of the business has previously engaged in the business or any
40 other business required to be licensed under the provisions of
41 this article and if so, with or for whom, at what location and for
42 what periods of time;

43 (7) Whether the applicant, any partner, officer, director or
44 employer of the business has previously applied for a license
45 certificate under the provisions of this article or a similar
46 license certificate in this or any other state, and if so, whether
47 the license certificate was issued or refused and, if issued,
48 whether it was ever suspended or revoked;

49 (8) A statement of previous general business experience and
50 the past history of the applicant; and

51 (9) Any other information that the commissioner may
52 reasonably require which may include information relating to
53 any contracts, agreements or understandings between the
54 applicant and other persons respecting the transaction of the
55 business, and any criminal record of the applicant if an individ-
56 ual, or of each partner if a copartnership, or of each officer and
57 director, if a corporation.

58 (c) In the case of an application for a license certificate to
59 engage in the business of new motor vehicle dealer, the
60 application shall, in addition to the matters outlined in subsec-
61 tion (b) of this section disclose:

62 (1) The make or makes of new motor vehicles which the
63 applicant will offer for sale in this state during the ensuing
64 fiscal year; and

65 (2) The exact number of new and used motor vehicles, if
66 any, sold at retail and wholesale by the applicant or his or her
67 predecessor, if any, during the preceding fiscal year, and if no
68 new and used motor vehicles were sold at retail and wholesale
69 by the applicant or his or her predecessor, if any, during the
70 preceding fiscal year, the number of new and used motor
71 vehicles the applicant reasonably expects to sell at retail and
72 wholesale during the ensuing fiscal year.

73 (d) In the case of an application for a license certificate to
74 engage in the business of used motor vehicle dealer, the
75 application shall in addition to the matters outlined in subsec-
76 tion (b) of this section, disclose the exact number of used motor
77 vehicles, if any, sold at retail and wholesale by the applicant or
78 his or her predecessor, if any, during the preceding fiscal year,
79 and if no used motor vehicles were sold at retail and wholesale
80 by the applicant or his or her predecessor, if any, during the
81 preceding fiscal year, the number of used motor vehicles the
82 applicant reasonably expects to sell at retail and wholesale
83 during the ensuing fiscal year.

84 (e) In the case of an application for a license certificate to
85 engage in the business of trailer dealer, recreational vehicle
86 dealer, motorcycle dealer, used parts dealer or wrecker/
87 dismantler/rebuilder, the application shall disclose any informa-
88 tion that the commissioner may reasonably require.

89 (f) The application shall be verified by the oath or affirma-
90 tion of the applicant, if an individual, or if the applicant is a
91 copartnership or corporation, by a partner or officer thereof, as
92 the case may be. Except as provided in section two-a of this
93 article, the application shall be accompanied by a bond of the

94 applicant in the penal sum of ten thousand dollars, in the form
95 prescribed by the commissioner, conditioned that the applicant
96 will not in the conduct of his or her business practice any fraud
97 which, or make any fraudulent representation which, shall cause
98 a financial loss to any purchaser, seller or financial institution
99 or agency, or the state of West Virginia, with a corporate surety
100 thereon authorized to do business in this state. The bond shall
101 be effective as of the date on which the license certificate
102 sought is issued.

103 (g) Upon receipt of any fully completed application,
104 together with any bond required under subsection (f) of this
105 section, the certificate of insurance as required in subsection (a)
106 of this section and the appropriate fee provided for in section
107 ten of this article, the commissioner may conduct any investiga-
108 tion he or she considers necessary to determine the accuracy of
109 any statements contained in the application and the existence of
110 any other facts which he or she considers relevant in consider-
111 ing the application. To facilitate the investigation, the commis-
112 sioner may withhold issuance or refusal of the license certifi-
113 cate for a period not to exceed twenty days.

114 (h) Any application for a license certificate under the
115 provisions of this article and any information submitted with
116 the application is confidential for the use of the division. No
117 person shall divulge any information contained in any applica-
118 tion or any information submitted with the application except
119 in response to a valid subpoena or subpoena duces tecum issued
120 pursuant to law.

**§17A-6-6. Refusal or issuance of license certificate; license certifi-
cate not transferable.**

1 (a) Upon the basis of the application and all other informa-
2 tion before him or her, the commissioner shall make and enter
3 an order denying the application for a license certificate and

4 refusing the license certificate sought. The denial and refusal
5 are final and conclusive unless an appeal is taken in accordance
6 with the provisions of section twenty-one of this article, if the
7 commissioner finds that the applicant (individually, if an
8 individual, or the partners, if a copartnership, or the officers and
9 directors, if a corporation):

10 (1) Has failed to furnish the required bond unless otherwise
11 exempt under the provisions of section two-a of this article;

12 (2) Has failed to furnish the required certificate of insur-
13 ance;

14 (3) Has knowingly made false statement of a material fact
15 in his or her application;

16 (4) Has habitually defaulted on financial obligations in this
17 state or any other state or jurisdiction;

18 (5) Has been convicted of a felony: *Provided*, That upon
19 appeal, the motor vehicle dealers advisory board established
20 pursuant to the provisions of section eighteen-a of this article
21 may grant as exemption of this restriction if the felony did not
22 involve financial matters, the motor vehicle industry or matters
23 of moral turpitude.

24 (6) So far as can be ascertained, has not complied with and
25 will not comply with the registration and title laws of this state
26 or any other state or jurisdiction;

27 (7) Does not or will not have or maintain at each place of
28 business (subject to the qualification contained in subdivision
29 (17), subsection (a), section one of this article with respect to a
30 new motor vehicle dealer) an established place of business as
31 defined for the business in question in that section;

32 (8) Has been convicted of any fraudulent act in connection
33 with the business of new motor vehicle dealer, used motor

34 vehicle dealer, house trailer dealer, trailer dealer, recreational
35 vehicle dealer, motorcycle dealer, used parts dealer, or wrecker
36 or dismantler in this state or any other state or jurisdiction;

37 (9) Has done any act or has failed or refused to perform any
38 duty for which the license certificate sought could be suspended
39 or revoked were it then issued and outstanding;

40 (10) Is not age eighteen years or older;

41 (11) Is delinquent in the payment of any taxes owed to the
42 United States, the state of West Virginia or any political
43 subdivision thereof;

44 (12) Has been denied a license in another state or has been
45 the subject of license revocation or suspension in another state;

46 (13) Has committed any action in another state which, if it
47 had been committed in this state, would be grounds for denial
48 and refusal of the application for a license certificate;

49 (14) Has failed to pay any civil penalty assessed by this
50 state or any other state; or

51 (15) Has failed to reimburse when ordered, any claim
52 against the dealer recovery fund as prescribed in section two-a
53 of this article.

54 Otherwise, the commissioner shall issue to the applicant the
55 appropriate license certificate which entitles the licensee to
56 engage in the business of new motor vehicle dealer, used motor
57 vehicle dealer, house trailer dealer, trailer dealer, recreational
58 vehicle dealer, motorcycle dealer, used parts dealer, or wrecker
59 or dismantler, as the case may be, during the period, unless
60 sooner suspended or revoked, for which the license certificate
61 is issued.

64 (b) A license certificate issued in accordance with the
65 provisions of this article is not transferable.

§17A-6-8. Form and display of license certificate or certified copy thereof; obtaining certified copy of license certificate; bond.

1 (a) The commissioner shall prescribe the form of license
2 certificate for each type of business required to be licensed
3 under the provisions of this article, and each license certificate
4 shall have printed on it the seal of the division and any other
5 information prescribed by the commissioner, and shall show as
6 to any licensee the location of each place of business of the
7 licensee. The license certificates for each type of business shall
8 show the year for which issued and shall be serially numbered.
9 The license certificate shall be delivered or mailed to the
10 licensee.

11 (b) When a licensee conducts his or her licensed business
12 at more than one location, he or she shall, upon application
13 therefor, obtain from the commissioner for each place of
14 business one certified copy of his or her license certificate. A
15 fee of one dollar shall be paid for each certified copy. Each
16 licensee shall keep his or her license certificate or certified copy
17 of the license certificate conspicuously posted at each place of
18 business.

19 (c) A licensee shall keep the bond, unless otherwise exempt
20 by section two-a of this article, and liability insurance required
21 by section four of this article in full force and effect at all times.
22 The aggregate liability of the surety in no event shall exceed the
23 principal sum of the bond. The surety on the bond shall have the
24 right to cancel the bond upon giving thirty days' notice to the
25 commissioner and thereafter shall be relieved of liability for
26 any breach of condition occurring after the effective date of the
27 cancellation.

28 (d) In the event of the loss or destruction of a license
29 certificate or a certified copy of a license certificate, the
30 licensee shall immediately make application for a certified copy
31 of the license certificate. A fee of one dollar shall be required
32 for any certified copy.

**§17A-6-18. Investigation; matters confidential; grounds for
suspending or revoking license or imposing fine;
suspension and revocation generally.**

1 (a) The commissioner may conduct an investigation to
2 determine whether any provisions of this chapter have been or
3 are about to be violated by a licensee. Any investigation shall
4 be kept in strictest confidence by the commissioner, the
5 division, the licensee, any complainant and all other persons,
6 unless and until the commissioner suspends or revokes the
7 license certificate of the licensee involved or fines the licensee:
8 *Provided*, That the commissioner may advise the motor vehicle
9 dealers advisory board of pending actions and may disclose to
10 the motor vehicle dealers advisory board any information that
11 enables it to perform its advisory function in imposing penal-
12 ties. The commissioner may suspend or revoke a license
13 certificate, suspend a special dealer plate or plates, impose a
14 fine or take any combination of these actions, if the commis-
15 sioner finds that the licensee:

16 (1) Has failed or refused to comply with the laws of this
17 state relating to the registration and titling of vehicles and the
18 giving of notices of transfers, the provisions and requirements
19 of this article, or any reasonable rules authorized in section
20 nine, article two of this chapter and promulgated to implement
21 the provisions of this article by the commissioner in accordance
22 with the provisions of article three, chapter twenty-nine-a of
23 this code;

24 (2) Has given any check in the payment of any fee required
25 under the provisions of this chapter which is dishonored;

26 (3) In the case of a dealer, has knowingly made or permitted
27 any unlawful use of any dealer special plate or plates issued to
28 him or her;

29 (4) In the case of a dealer, has a dealer special plate or
30 plates to which he or she is not lawfully entitled;

31 (5) Has knowingly made false statement of a material fact
32 in his or her application for the license certificate then issued
33 and outstanding;

34 (6) Has habitually defaulted on financial obligations;

35 (7) Does not have and maintain at each place of business,
36 (subject to the qualification contained in subdivision (17),
37 subsection (a), section one of this article with respect to a new
38 motor vehicle dealer) an established place of business as
39 defined for the business in question in section one of this
40 article;

41 (8) Has been guilty of any fraudulent act in connection with
42 the business of new motor vehicle dealer, used motor vehicle
43 dealer, house trailer dealer, trailer dealer, motorcycle dealer,
44 used parts dealer, or wrecker or dismantler;

45 (9) Has defrauded or is attempting to defraud any buyer or
46 any other person, to the damage of the buyer or other person, in
47 the conduct of the licensee's business;

48 (10) Has defrauded or is attempting to defraud the state or
49 any political subdivision of the state of any taxes or fees in
50 connection with the sale or transfer of any vehicle;

51 (11) Has committed fraud in the registration of a vehicle;

52 (12) Has knowingly purchased, sold or otherwise dealt in a
53 stolen vehicle or vehicles;

54 (13) Has advertised by any means, with intent to defraud,
55 any material representation or statement of fact which is untrue,
56 misleading or deceptive in any particular relating to the conduct
57 of the licensed business;

58 (14) Has willfully failed or refused to perform any legally
59 binding written agreement with any buyer;

60 (15) Has made a fraudulent sale or purchase;

61 (16) Has failed or refused to assign, reassign or transfer a
62 proper certificate of title;

63 (17) Has a license certificate to which he or she is not
64 lawfully entitled;

65 (18) Has misrepresented a customer's credit or financial
66 status to obtain financing; or

67 (19) Has failed to reimburse when ordered, any claim
68 against the dealer recovery fund as prescribed in section two-a
69 of this article.

70 The commissioner shall also suspend or revoke the license
71 certificate of a licensee if he or she finds the existence of any
72 ground upon which the license certificate could have been
73 refused, or any ground which would be cause for refusing a
74 license certificate to the licensee were he or she then applying
75 for the license certificate.

76 (b) Whenever a licensee fails or refuses to keep the bond,
77 unless exempt from the requirement pursuant to section two-a
78 of this article, or liability insurance required by section four of
79 this article in full force and effect, the commissioner shall

80 automatically suspend the license certificate of the licensee
81 unless and until a bond or certificate of insurance as required by
82 section four of this article is furnished to the commissioner.
83 When the licensee furnishes the bond or certificate of insurance
84 to the commissioner, the commissioner shall vacate the
85 suspension.

86 (c) Suspensions under this section shall continue until the
87 cause for the suspension has been eliminated or corrected.
88 Revocation of a license certificate shall not preclude application
89 for a new license certificate. The commissioner shall process
90 the application for a new license certificate in the same manner
91 and issue or refuse to issue the license certificate on the same
92 grounds as any other application for a license certificate is
93 processed, considered and passed upon, except that the commis-
94 sioner may give any previous suspension and the revocation
95 such weight in deciding whether to issue or refuse the license
96 certificate as is correct and proper under all of the circum-
97 stances.

CHAPTER 204

**(H. B. 2594 — By Delegates Douglas, Kuhn, Butcher,
Hatfield, Manchin, Prunty and Leggett)**

[Passed April 3, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section eighteen-a, article six, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section eighteen-b, relating to continuing the motor vehicle dealers advisory board.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR
DISMANTLERS; SPECIAL PLATES; TEMPORARY
PLATES OR MARKERS, ETC.**

§17A-6-18a. Motor vehicle dealers advisory board.

§17A-6-18b. Continuation of board.

§17A-6-18a. Motor vehicle dealers advisory board.

1 (a) There is created a motor vehicle dealers advisory board
2 to assist and to advise the commissioner on the administration
3 of laws regulating the motor vehicle industry; to work with the
4 commissioner in developing new laws, rules or policies
5 regarding the motor vehicle industry; and to give the commis-
6 sioner such further advice and assistance as he or she may from
7 time to time require.

8 The board shall consist of nine members and the commis-
9 sioner of motor vehicles, or his or her representative, who shall
10 be an ex officio member. Two members shall represent new
11 motor vehicle dealers, with one of these two members repre-
12 senting dealers that sell less than one hundred new vehicles per
13 year; one member shall represent used motor vehicle dealers;
14 one member shall represent wrecker/dismantler/rebuilders; one
15 member shall represent automobile auctions; one member shall
16 represent recreational dealers; one member shall represent the
17 West Virginia attorney general's office; and two members shall
18 represent consumers. All of the representatives, except the
19 attorney general representative who shall be designated by the
20 attorney general, shall be appointed by the governor with the

21 advice and consent of the Senate, with no more than five
22 representatives being from the same political party. The
23 appointed members shall serve without compensation.

24 The terms of the board members shall be for three years
25 commencing the first day of July, one thousand nine hundred
26 ninety-six. Two members shall be appointed to serve one year,
27 two members shall be appointed to serve two years and five
28 members shall be appointed to serve three years. Successive
29 appointments shall be for the full three years. The attorney
30 general representative shall serve continuously.

31 The board shall meet at least four times annually and at the
32 call of the commissioner.

33 (b) The commissioner shall consult with the board before
34 he or she takes any disciplinary action against a dealer, an
35 automobile auction or a license service to revoke, or suspend a
36 license, place the licensee on probation or levy a civil penalty,
37 unless the commissioner determines that the consultation would
38 endanger a criminal investigation.

39 (c) The commissioner may consult with the board by mail,
40 by facsimile, by telephone or at a meeting of the board, but the
41 commissioner is not bound by the recommendations of the
42 board. The commissioner shall give members seven days from
43 the date of a mailing or other notification to respond to pro-
44 posed actions, except in those instances when the commissioner
45 determines that the delay in acting creates a serious danger to
46 the public's health or safety or would unduly compromise the
47 effectiveness of the action.

48 (d) No action taken by the commissioner shall be subject to
49 challenge or rendered invalid on account of his or her failure to
50 consult with the board.

§17A-6-18b. Continuation of board.

1 After having conducted a performance audit through its
2 joint committee on government operations, pursuant to article
3 ten, chapter four of this code, the Legislature hereby finds and
4 declares that the motor vehicle dealers advisory board should be
5 continued and reestablished. Accordingly, notwithstanding the
6 provisions of said article, the motor vehicle dealers advisory
7 board shall continue to exist until the first day of July, two
8 thousand four, unless sooner terminated, continued or reestab-
9 lished by act of the Legislature.

CHAPTER 205

(Com. Sub. for H. B. 2974 — By Delegates
Butcher, Douglas and Kuhn)

[Passed April 12, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-b, article ten, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections seven, eight and nine, article one-d, chapter seventeen-b; to further amend said article by adding thereto a new section, designated section ten; and to amend and reenact section eight, article two of said chapter, all relating to motorcycles; increasing fees; terminating the motorcycle safety and education committee; creating the motorcycle safety awareness board; membership of the board; and termination date of the board.

Be it enacted by the Legislature of West Virginia:

That section three-b, article ten, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended,

be amended and reenacted; that sections seven, eight and nine, article one-d, chapter seventeen-b be amended and reenacted; that said article be further amended by adding thereto a new section, designated section ten; and that section eight, article two of said chapter be amended and reenacted, all to read as follows:

Chapter

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

17B. Motor Vehicle Driver's Licenses.

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

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-3b. Motorcycle safety fee.

1 Upon the annual registration of any motorcycle, the
2 division shall collect a motorcycle safety fee of six dollars and
3 fifty cents, in addition to the registration fee specified in section
4 three of this article. The division shall deposit five dollars and
5 fifty cents of the motorcycle safety fee into the state treasury
6 and credit the moneys to the motorcycle safety fund. The
7 division shall deposit the remaining one dollar of the motorcy-
8 cle safety fee into the state treasury and credit the moneys
9 collected to the motorcycle license examination fund estab-
10 lished in section seven-c, article two, chapter seventeen-b of
11 this code.

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

Article

1D. Motorcycle Safety Education.

2. Issuance of License, Expiration and Renewal.

ARTICLE 1D. MOTORCYCLE SAFETY EDUCATION.

§17B-1D-7. Motorcycle safety account.

§17B-1D-8. Motorcycle safety and education committee terminated; motorcycle safety awareness board created.

§17B-1D-9. Authority to promulgate rules.

§17B-1D-10. Continuation of motorcycle safety awareness board.

§17B-1D-7. Motorcycle safety account.

1 (a) There is hereby created a special fund in the state
2 treasury which shall be designated the “motorcycle safety
3 fund”. The fund shall consist of all moneys received from
4 motorcycle driver licensing fees except instruction permit fees,
5 five dollars and fifty cents of the moneys received from the
6 motorcycle safety fee assessed with each motorcycle registra-
7 tion under section three-b, article ten, chapter seventeen-a of
8 this code and any other moneys specifically allocated to the
9 fund. The fund shall not be treated by the auditor and treasurer
10 as part of the general revenue of the state. The fund shall be a
11 special revolving fund to be used and paid out upon order of the
12 commissioner of motor vehicles, based upon the recommenda-
13 tions of the motorcycle safety awareness board created under
14 section eight, article one-d, chapter seventeen-b of this code,
15 solely for the purposes specified in this chapter.

16 (b) The fund shall be used by the division of motor vehicles
17 to defray the cost of implementing and administering the
18 motorcycle safety education program established in section two
19 of this article.

§17B-1D-8. Motorcycle safety and education committee terminated; motorcycle safety awareness board created.

1 (a) The motorcycle safety and education committee created
2 pursuant to subsection (f), of section forty-four, article fifteen,
3 chapter seventeen-c of this code will terminate on the thirtieth
4 day of June, two thousand one.

5 (b) Effective the first day of July, two thousand one, there
6 is created an eight member motorcycle safety awareness board
7 consisting of four ex officio members and four non-governmental
8 members. The ex officio members are the motorcycle safety
9 program coordinator, as appointed under section two of this
10 article, or a designee; the superintendent of the state police or
11 a designee; the commissioner of the bureau of public health or
12 a designee; and the commissioner of the division of tourism or
13 a designee. The four non-governmental members are a licensed
14 motorcycle operator who will be appointed for an initial term
15 of one year; a member of American bikers aimed toward
16 education (ABATE) or the West Virginia confederation of
17 motorcycle clubs who will be appointed for an initial term of
18 one year; a licensed insurance agent who has a valid motorcycle
19 endorsement who will be appointed for an initial term of two
20 years; and, an owner of a motorcycle dealership or supplier of
21 aftermarket nonfranchised motorcycle supplies who will be
22 appointed for an initial term of three years. The motorcycle
23 safety program coordinator shall serve as chair of the board.
24 The non-governmental members will be appointed by the
25 governor with the advice and consent of the Senate, and will
26 serve without compensation. The terms will be for three years,
27 except for the initial appointments which will be staggered
28 according to the provisions of this article. Members may be
29 reappointed to the board. Any nongovernmental member who
30 is absent without good cause from three consecutive meetings
31 of the board may be removed from the board and a new
32 member appointed by the governor.

33 (c) The board may recommend to the superintendent of the
34 state police types and makes of protective helmets, eye protec-
35 tion devices and equipment offered for sale, purchased or used
36 by any person. The board may make recommendations to the
37 commissioner of motor vehicles regarding the use of the
38 moneys in the motorcycle safety fund created under section
39 seven of this article. The board shall report annually to the
40 Legislature on or before the first day of each regular legislative
41 session.

§17B-1D-9. Authority to promulgate rules.

1 The division shall propose rules for legislative approval in
2 accordance with the provisions of article three, chapter twenty-
3 nine-a of this code, as are necessary to carry out the provisions
4 of this article.

§17B-1D-10. Continuation of motorcycle safety awareness board.

1 The motorcycle safety awareness board shall terminate on
2 the first day of July, two thousand three, 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.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.**§17B-2-8. Issuance and contents of licenses; fees.**

1 (a) The division shall, upon payment of the required fee,
2 issue to every applicant qualifying therefor a driver's license,
3 which shall indicate the type or general class or classes of
4 vehicle or vehicles the licensee may operate in accordance with
5 this chapter or chapter seventeen-e of this code, or motorcy-
6 cle-only license. Each license shall contain a coded number
7 assigned to the licensee, the full name, date of birth, residence
8 address, a brief description and a color photograph of the
9 licensee and either a facsimile of the signature of the licensee
10 or a space upon which the signature of the licensee shall be
11 written with pen and ink immediately upon receipt of the
12 license. No license is valid until it has been so signed by the
13 licensee: *Provided*, that the commissioner may issue upon
14 proper documentation, a duplicate or renewed valid without-
15 photo license for resident applicants temporarily out of state. A
16 driver's license which is valid for operation of a motorcycle
17 shall contain a motorcycle endorsement. The division shall use
18 such process or processes in the issuance of licenses that will,
19 insofar as possible, prevent any alteration, counterfeiting,
20 duplication, reproduction, forging or modification of, or the
21 superimposition of a photograph on, the license.

22 (b) The fee for the issuance of a Class E driver's license is
23 two dollars and fifty cents per year for each year the license is
24 issued to be valid. The fee for issuance of a Class D driver's
25 license is six dollars and twenty-five cents per year for each
26 year the license is issued to be valid. An additional fee of fifty
27 cents shall be collected from the applicant at the time of
28 original issuance or each renewal and the additional fee shall be
29 deposited in the "combined voter registration and driver's
30 licensing fund," established pursuant to the provisions of
31 section twelve, article two, chapter three of this code. The
32 additional fee for adding a motorcycle endorsement to a
33 driver's license is one dollar per year for each year the license
34 is issued.

35 The fee for issuance of a motorcycle-only license is two
36 dollars and fifty cents for each year for which the motorcycle
37 license is to be valid. The fees for the motorcycle endorsement
38 or motorcycle-only license shall be paid into a special fund in
39 the state treasury known as the motorcycle safety fund as
40 established in section seven, article one-d of this chapter.

41 (c) On or after the first day of January, two thousand one,
42 the fee for the issuance of either the level one or level two
43 graduated driver's license as prescribed in section three-a of
44 this article is five dollars.

CHAPTER 206

**(Com. Sub. for H. B. 2856 — By Delegates Webster,
Manuel, Amores, Craig, Smirl, Givens and Hrutkay)**

[Passed April 12, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fifty, relating to prohibiting the installation of any materials other than a previously undeployed air bag; and penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. EQUIPMENT.

§17C-15-50. Deployed restraint systems resale or reinstallation prohibited.

1 A person who knowingly installs or reinstalls any object in
2 lieu of an air bag or anything other than a not previously
3 deployed air bag that was designed in accordance with federal
4 safety regulations for the make, model and year of vehicle, as
5 part of a vehicle inflatable restraint system, is guilty of a
6 misdemeanor and, upon conviction thereof, shall be fined not
7 less than one thousand nor more than five thousand dollars, or
8 imprisoned in the county or regional jail not more than one
9 year, or both fined and imprisoned.

CHAPTER 207

(S. B. 605 — By Senators Wooton, Caldwell,
Hunter, Redd, Ross, Snyder and Deem)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article eleven, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to improver's liens on motor vehicles; providing that secured party must pay improver upon redemption or other disposition of repossessed vehicle in certain circumstances; providing certain limitations in amount improver may recover; providing for certain disposition of remaining proceeds after disposition of vehicle by secured party; and expressing that the provisions will not limit rights under certain insurance recovery.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. MISCELLANEOUS LIENS AND PLEDGES.

§38-11-3. Improver's, storer's or transporter's lien on personal property and animals.

1 A person who, while in possession thereof, makes, alters,
2 repairs, stores, transports or in any way enhances the value of
3 an article of personal property, or boards, pastures, feeds, trains,
4 improves or transports any animal shall have a lien upon such
5 article or animal while lawfully in the possession thereof, for
6 the charges agreed upon, or, if no charges be agreed upon, then
7 for his just and reasonable charges for the work done or the
8 board or storage or transportation furnished, to the extent and
9 in the manner provided for in section fourteen of this article,
10 and may retain possession thereof until such charges are paid.
11 Such lien shall be good against the person who deposited the
12 property with the lienor and against any other person by whose
13 authority or with whose consent the property was deposited:
14 *Provided*, That, notwithstanding the provisions of this section
15 and section two of this article, if a person possessing an

16 improver's lien on a motor vehicle releases that vehicle to a
17 secured party taking possession after default, the secured party
18 shall, upon redemption of the vehicle by the debtor or resale or
19 other disposition by the secured party, pay to the improver the
20 lesser of: (i) The actual cost of improvements as measured by
21 the cost of inventory and labor; or (ii) fifteen hundred dollars:
22 *Provided, however,* That improvements shall not include
23 nonstock changes in the appearance or performance of the
24 vehicle: *Provided further,* That if after satisfaction of any prior
25 perfected lien, proceeds remain from the sale, redemption or
26 other disposition of the vehicle by the secured party, such
27 proceeds shall be used to satisfy any balance remaining on the
28 improver's lien: *And provided further,* That nothing herein shall
29 be construed as impairing or affecting the secured party's right
30 to recover under any insurance policy covering the vehicle. If
31 two or more articles of personal property are made, altered,
32 repaired, stored, transported or enhanced in value as aforesaid,
33 or two or more animals are boarded, pastured, fed, trained,
34 improved or transported as aforesaid, under one contract or
35 agreement, any one or more of such articles or animals may be
36 held under the lien, hereinbefore mentioned, for all of the
37 charges upon all such articles included in such contract or
38 agreement.

CHAPTER 208

**(Com. Sub. for S. B. 415 — By Senators Love, Anderson,
Bailey, Boley, Bowman, Caldwell, Edgell, Facemyer,
Fanning, Hunter, Minard, Mitchell, Prezioso, Redd,
Ross, Rowe, Sprouse, Plymale and Minear)**

[Passed April 14, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-one, relating to authorizing rainy day funds for counties known as a financial stabilization fund; naming act; providing findings of the Legislature; authorizing county commissions to create financial stabilization funds; specifying the receipts available for the fund; establishing cap of thirty percent for the fund; authorizing investment of funds; and specifying authorized expenditures from the fund.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. COUNTY FINANCIAL STABILIZATION FUND ACT.

§7-21-1. Short title.

§7-21-2. Findings and declarations.

§7-21-3. Budget stabilization fund; creation; appropriation; maximum.

§7-21-4. Fund investment; usage.

§7-21-1. Short title.

- 1 This article may be known and cited as the “County
- 2 Financial Stabilization Fund Act”.

§7-21-2. Findings and declarations.

- 1 The Legislature finds and declares that:
- 2 (1) County government should maintain a prudent level of
- 3 financial resources to try to protect against reducing service
- 4 levels or raising taxes and fees because of temporary revenue
- 5 shortfalls, unpredicted one-time expenditures or emergency
- 6 situations; and

7 (2) The creation, maintenance and use of a financial
8 stabilization fund will provide counties with assistance to meet
9 these challenges, as well as enable them to improve their
10 financial management and practices.

**§7-21-3. Budget stabilization fund; creation; appropriation;
maximum.**

1 (a) A county commission may create a “financial stabiliza-
2 tion fund” by a majority vote of the members. The fund may
3 receive appropriations, gifts, grants and any other funds made
4 available.

5 (b) The county commission may appropriate a sum to the
6 fund from any surplus in the general fund at the end of each
7 fiscal year or from any other money available.

8 (c) The amount of money in the fund may not exceed thirty
9 percent of the county’s most recent general fund budget, as
10 originally adopted. When the fund exceeds the thirty percent,
11 the county commission shall transfer the excess to any fund it
12 considers appropriate.

§7-21-4. Fund investment; usage.

1 (a) The county commission may invest the money in the
2 fund as it considers appropriate, with the earnings retained by
3 the fund.

4 (b) The county commission may appropriate money in the
5 financial stabilization fund upon a majority vote for any of the
6 following purposes:

7 (1) To cover a general fund shortfall; or

8 (2) Any other purpose the commission considers appropri-
9 ate.

CHAPTER 209

**(Com. Sub. for S. B. 200 — By Senators Snyder,
Burnette, Oliverio, Ross, Deem and McKenzie)**

[Passed April 13, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the creation of a new municipality; establishing the requirements for creation of a new municipality; prohibiting creation of a new municipality from an incorporated area; establishing population density requirements; prohibiting incorporation of an area that is disproportionate to the number of inhabitants; requiring proponents of new municipality to provide the county commission with certain information, including a detailed map of the area, plans for providing municipal services and impact of incorporation on fire protection and insurance rates; prohibiting incorporation of new municipality if it would be in close proximity to an existing municipality and the existing municipality is capable of more effectively or efficiently providing services to the area; prohibiting incorporation of a new municipality if it is not in the best interest of the county as a whole; and providing that it is within the discretion of the county commission, based on certain criteria, to determine the area to be included or excluded in the new municipality.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CREATION OF MUNICIPALITIES.**Part I. General.****§8-2-1. Requirements for incorporation; size and character of territory; population.**

1 (a) Any part of a county or counties may be incorporated as
2 a city, depending upon the population, either as a Class I, Class
3 II or Class III city, or as a Class IV town or village, as classified
4 in section three, article one of this chapter if the area proposed
5 for incorporation meets the following conditions:

6 (1) The area is not currently within any municipality urban
7 in character;

8 (2) For areas that are more than one square mile there must
9 be an average of not less than five hundred inhabitants or
10 freeholders per square mile;

11 (3) For areas less than one square mile there must be at
12 least one hundred inhabitants or freeholders;

13 (4) The total area to be incorporated must not include an
14 amount of territory disproportionate to its number of inhabit-
15 ants; and

16 (5) The proponents of incorporation shall provide to the
17 county commission a proposal which shall include:

18 (A) A map or maps of the area to be incorporated showing
19 the following information:

20 (i) The present boundaries of nearby municipalities and the
21 proposed boundaries of the area to be incorporated; and

22 (ii) The proposed extensions of water mains and sewer
23 outfalls to serve the incorporated area, if such utilities are to be
24 operated by the municipality. The water and sewer map must
25 bear the seal of a registered professional engineer or a licensed
26 surveyor.

27 (B) A statement that the area to be incorporated meets the
28 applicable requirements of this article.

29 (C) A statement setting forth the plans of the proposed
30 municipality for providing to the area to be incorporated each
31 major municipal service and whether the service will be
32 provided by the municipality or by contract with a public or
33 private entity. The plan shall:

34 (i) Provide for police protection, fire protection, solid waste
35 collection, public water and sewer services and street mainte-
36 nance services to the area to be incorporated on the date of
37 incorporation;

38 (ii) A statement of the impact of the incorporation on any
39 rural fire department providing service in the area to be
40 incorporated and a statement of the impact of the incorporation
41 on fire protection and fire insurance rates in the area to be
42 incorporated; and

43 (iii) A statement showing how the proposed incorporation
44 will affect the proposed municipalities finances and services.

45 (b) The creation of any new municipality is prohibited if:

46 (1) The area to be incorporated is within close proximity to
47 an existing municipality and the existing municipality is
48 capable of more effectively and efficiently providing services
49 to the area; or

50 (2) The creation of a new municipality is not in the best
51 interest of the county as a whole.

52 (c) It is within the reasonable discretion of the county
53 commission to determine the exact area or portions thereof to
54 be included or excluded in the new municipality, considering
55 the following:

56 (1) The topography of the area;

57 (2) The benefits of incorporation;

58 (3) The amount of uninhabited land required for parks and
59 recreational use; and

60 (4) Normal growth and development and the present and
61 possible future uses so as to prevent hardships and inequities.

CHAPTER 210

**(Com. Sub. for S. B. 202 — By Senators Snyder,
Burnette, Oliverio, McKenzie, Kessler and Edgel)**

[Passed April 12, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, four and five, article six, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to modifying procedures allowing municipal incorporation by annexation; prohibiting retroactive taxation of businesses being annexed; requiring additional information to be submitted by municipalities to county commissions relating to proposed

annexations; modifying eligibility to participate in annexation election as a qualified voter; allowing firms and corporations to sign petitions and vote on annexation; revising procedure for annexation by minor boundary adjustment; altering certain population requirements for annexations; revising areas eligible to be annexed by minor boundary adjustment; altering requirements and responsibilities of county commissions' review of annexation by minor boundary adjustment; modifying application requirements for annexation by minor boundary adjustment; requiring municipalities to provide an analysis of impact of proposed annexation on businesses and the municipality; establishing minimum criteria to be considered by county commission when making a determination regarding an annexation by minor boundary adjustment; allowing modification of a denied annexation application to be resubmitted to the county commission; requiring explanation of decision by county commission; and providing for judicial review of annexation decisions.

Be it enacted by the Legislature of West Virginia:

That sections one, two, four and five, article six, chapter eight 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. ANNEXATION.

PART I. GENERAL.

§8-6-1. Annexation of unincorporated territory.

§8-6-2. Petition for annexation.

§8-6-4. Annexation without an election.

§8-6-5. Annexation by minor boundary adjustment.

§8-6-1. Annexation of unincorporated territory.

- 1 (a) Unincorporated territory may be annexed to and become
- 2 part of a municipality contiguous thereto only in accordance
- 3 with the provisions of this article.

4 (b) Any farmlands or operations as described in article
5 nineteen, chapter nineteen of this code which may be annexed
6 into a municipality shall be protected in the continuation of
7 agricultural use after being annexed.

8 (c) Any new imposition of a tax or any increase in the rate
9 of tax upon any business, occupation or privilege following
10 annexation shall be applied in accordance with the provisions
11 of section five, article thirteen, chapter eight of this code.

PART II. ANNEXATION BY ELECTION.

§8-6-2. Petition for annexation.

1 (a) Five percent or more of the freeholders of a municipal-
2 ity desiring to have territory annexed thereto may file a petition
3 in writing with the governing body thereof setting forth the
4 change proposed in the metes and bounds of the municipality
5 and asking that a vote be taken upon the proposed change. The
6 petition shall be verified and shall be accompanied by an
7 accurate survey map showing the territory to to be annexed to
8 the corporate limits by the proposed change.

9 (b) The petitioners shall obtain a surety bond in an amount
10 set by the governing body sufficient to cover the cost of the
11 election. The bond shall be forfeited if a majority of the votes
12 cast are against the proposed annexation.

13 (c) The governing body shall, upon receipt of the bond,
14 order a vote of the qualified voters of the municipality to be
15 taken upon the proposed annexation on a date and at a time and
16 place to be named in the order, not less than twenty nor more
17 than thirty days from the date thereof.

18 (d) The governing body shall, at the same time, order a vote
19 of all of the qualified voters of the additional territory and of all
20 of the freeholders of such additional territory whether they

21 reside or have a place of business therein or not, to be taken
22 upon the question on the same day at some convenient place in
23 or near the additional territory.

24 (e) The governing body shall cause the order for the
25 election to be published, at the cost of the municipality, as a
26 Class II-0 legal advertisement in compliance with the provi-
27 sions of article three, chapter fifty-nine of this code. The
28 publication area is the municipality and the additional territory.
29 The first publication must be at least fourteen days prior to the
30 date upon which the vote is to be taken. The order for the
31 election shall contain an accurate description by metes and
32 bounds of the additional territory proposed to be annexed to the
33 corporate limits by the proposed change, a summary of the
34 municipality's plan for providing services to the additional
35 territory and, if practicable, shall also contain a popular
36 description of the additional territory.

37 (f) The election shall be held, superintended and conducted
38 and the results thereof ascertained, certified, returned and
39 canvassed in the same manner by the same individuals as
40 elections for municipal officers. The election is reviewable by
41 the circuit court of the county in which the municipality or the
42 major portion thereof, including the area proposed to be
43 annexed, is located. The order may be reviewed by the circuit
44 court as an order of a county commission ordering an election
45 may be reviewed under section sixteen, article five of this
46 chapter.

47 (g) The ballots, or ballot labels where voting machines are
48 used, shall have written or printed on them the words:

49 For Annexation

50 Against Annexation

51 (h) Any freeholder which is a firm or corporation may vote
52 by its manager, president or executive officer duly designated
53 in writing by such firm or corporation.

54 (i) An individual who is a qualified voter and freeholder of
55 the municipality or the additional territory shall be entitled to
56 vote only once.

57 (j) For purposes of this section, the term “qualified voter of
58 the additional territory” includes a firm or corporation in the
59 additional territory regardless of whether the firm or corpora-
60 tion is a freeholder. A firm or corporation may vote by its
61 manager, president, or executive officer duly designated in
62 writing by the firm or corporation. In any instance where a
63 freeholder leases or rents real property to a firm or corporation
64 the freeholder and the firm or corporation shall determine
65 which entity will be entitled to vote in the annexation election.

66 (k) When an election is held in any municipality in accor-
67 dance with the provisions of this section, another election
68 relating to the same proposed change or any part thereof shall
69 not be held for a period of one year.

70 (l) If a majority of all of the legal votes cast both in the
71 municipality and in the territory are in favor of the proposed
72 annexation, then the governing body shall proceed as specified
73 in the immediately succeeding section of this article.

PART III. ANNEXATION WITHOUT ELECTION.

§8-6-4. Annexation without an election.

1 (a) The governing body of a municipality may, by ordi-
2 nance, provide for the annexation of additional territory without
3 ordering a vote on the question if: (1) A majority of the
4 qualified voters of the additional territory file with the govern-
5 ing body a petition to be annexed; and (2) a majority of all

6 freeholders of the additional territory, whether they reside or
7 have a place of business therein or not, file with the governing
8 body a petition to be annexed.

9 (b) For purposes of this section, the term “qualified voter of
10 the additional territory” includes firms and corporations in the
11 additional territory regardless of whether the firm or corpora-
12 tion is a freeholder. A firm or corporation may sign a petition
13 by its manager, president or executive officer duly designated
14 in writing by the firm or corporation. In any instance where a
15 freeholder leases or rents real property to a firm or corporation
16 the freeholder and the firm or corporation shall determine
17 which entity will be entitled to sign a petition relating to the
18 proposed annexation.

19 (c) The determination that the requisite number of petition-
20 ers have filed the required petitions shall be reviewable by the
21 circuit court of the county in which the municipality or the
22 major portion of the territory thereof, including the area
23 proposed to be annexed is located, upon certiorari to the
24 governing body in accordance with the provisions of article
25 three, chapter fifty-three of this code.

26 (d) A qualified voter of the additional territory who is also
27 a freeholder of the additional territory may join only one
28 petition of the additional territory.

29 (e) It shall be the responsibility of the governing body to
30 enumerate and verify the total number of eligible petitioners, in
31 each category, from the additional territory. In determining the
32 total number of eligible petitioners, in each category, a free-
33 holder or any other entity that is a freeholder shall be limited to
34 one signature on a petition as provided in this section. There
35 shall be allowed only one signature on a petition per parcel of
36 property and any freehold interest that is held by more than one
37 individual or entity shall be allowed to sign a petition only upon

38 the approval by the majority of the individuals or entities that
39 have an interest in the parcel of property.

40 (f) If all of the eligible petitioners are qualified voters, only
41 a voters' petition is required.

42 (g) If satisfied that the petition is sufficient in every respect,
43 the governing body shall enter that fact upon its journal and
44 forward a certificate to that effect to the county commission of
45 the county wherein the municipality or the major portion of the
46 territory thereof, including the additional territory, is located.
47 The county commission shall thereupon enter an order as
48 described in the immediately preceding section of this article.
49 After the date of the order, the corporate limits of the munici-
50 pality shall be as set forth therein.

PART IV. ANNEXATION BY MINOR BOUNDARY ADJUSTMENT.

§8-6-5. Annexation by minor boundary adjustment.

1 (a) In the event a municipality desires to increase its
2 corporate limits by making a minor boundary adjustment, the
3 governing body of the municipality may apply to the county
4 commission of the county wherein the municipality or the
5 major portion of the territory thereof, including the territory to
6 be annexed, is located for permission to effect annexation by
7 minor boundary adjustment. The municipality shall pay the
8 costs of all proceedings before the commission.

9 (b) In addition to any other annexation configuration, a
10 municipality may incorporate by minor boundary adjustment:
11 (i) Territory that consists of a street or highway as defined in
12 section thirty-five, article one, chapter seventeen-c of this code
13 and one or more freeholders; or (ii) territory that consists of a
14 street or highway as defined in section thirty-five, article one,
15 chapter seventeen-c of this code which does not include a

16 freeholder but which is necessary for the provision of emer-
17 gency services in the territory being annexed.

18 (c) A county commission may develop a form application
19 for annexation for minor boundary adjustment. An application
20 for annexation by minor boundary adjustment shall include, but
21 not be limited to:

22 (1) The number of businesses located in and persons
23 residing in the additional territory;

24 (2) An accurate map showing the metes and bounds of the
25 additional territory;

26 (3) A statement setting forth the municipality's plan for
27 providing the additional territory with all applicable public
28 services such as police and fire protection, solid waste collec-
29 tion, public water and sewer services and street maintenance
30 services, including to what extent the public services are or will
31 be provided by a private solid waste collection service or a
32 public service district;

33 (4) A statement of the impact of the annexation on any
34 private solid waste collection service or public service district
35 currently doing business in the territory proposed for annex-
36 ation in the event the municipality should choose not to utilize
37 the current service providers;

38 (5) A statement of the impact of the annexation on fire
39 protection and fire insurance rates in the territory proposed for
40 annexation;

41 (6) A statement of how the proposed annexation will affect
42 the municipality's finances and services; and

43 (7) A statement that the proposed annexation meets the
44 requirements of this section.

45 (d) Upon receipt of a complete application for annexation
46 by minor boundary adjustment, the county commission shall
47 determine whether the application meets the threshold require-
48 ments for consideration as a minor boundary adjustment
49 including whether the annexation could be efficiently and cost
50 effectively accomplished under section two or four of this
51 article.

52 (e) If the application meets the threshold requirements, the
53 county commission shall order publication of a notice of the
54 proposed annexation to the corporate limits and of the date and
55 time set by the commission for a hearing on the proposal.
56 Publication shall be as in the case of an order calling for an
57 election, as set forth in section two of this article. A like notice
58 shall be prominently posted at not less than five public places
59 within the area proposed to be annexed.

60 (f) In making its final decision on an application for
61 annexation by minor boundary adjustment, the county commis-
62 sion shall, at a minimum, consider the following factors:

63 (1) Whether the territory proposed for annexation is
64 contiguous to the corporate limits of the municipality. For
65 purposes of this section, "contiguous" means that at the time the
66 application for annexation is submitted, the territory proposed
67 for annexation either abuts directly on the municipal boundary
68 or is separated from the municipal boundary by an unincorpo-
69 rated street or highway, or street or highway right-of-way, a
70 creek or river, or the right-of-way of a railroad or other public
71 service corporation, or lands owned by the state or the federal
72 government;

73 (2) Whether the proposed annexation is limited solely to a
74 division of highways right-of-way or whether the division of
75 highways holds title to the property in fee;

76 (3) Whether affected parties of the territory to be annexed
77 oppose or support the proposed annexation. For purposes of this
78 section, "affected parties" means freeholders, firms, corpora-
79 tions and qualified voters in the territory proposed for annex-
80 ation and in the municipality and a freeholder whose property
81 abuts a street or highway, as defined in section thirty-five,
82 article one, chapter seventeen-c of this code, when: (i) The
83 street or highway is being annexed to provide emergency
84 services; or (ii) the annexation includes one or more freeholders
85 at the end of the street or highway proposed for annexation;

86 (4) Whether the proposed annexation consists of a street or
87 highway as defined in section thirty-five, article one, chapter
88 seventeen-c of this code and one or more freeholders;

89 (5) Whether the proposed annexation consists of a street or
90 highway as defined in section thirty-five, article one, chapter
91 seventeen-c of this code which does not include a freeholder but
92 which is necessary for the provision of emergency services in
93 the territory being annexed;

94 (6) Whether another municipality has made application to
95 annex the same or substantially the same territory; and

96 (7) Whether the proposed annexation is in the best interest
97 of the county as a whole.

98 (g) If the county commission denies the application for
99 annexation by minor boundary adjustment, the commission may
100 allow the municipality to modify the proposed annexation to
101 meet the commissions objections. The commission must order
102 another public hearing if significant modifications are pro-
103 posed.

104 (h) The final order of the commission shall include the
105 reasons for the grant or denial of the application.

106 (i) The municipality applying for annexation or any
107 affected party may appeal the commission's final order to the
108 circuit court of the county in which the municipality or the
109 major portion thereof, including the area proposed to be
110 annexed, is located. The county commission may participate in
111 any appeal taken from its order in the same manner and to the
112 same extent as a party to the appeal. The order may be reviewed
113 by the circuit court as an order of a county commission ordering
114 an election may be reviewed under section sixteen, article five
115 of this chapter.

CHAPTER 211

(S. B. 555 — By Senators Ross, Caldwell, Kessler, Minard and Redd)

[Passed April 12, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article twelve, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the powers, duties and authority of municipalities; authorizing municipalities and private solid waste motor carriers to negotiate an agreement for continued private solid waste collection services in an annexed area; and limiting the agreement to a period of no more than three years.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

§8-12-5. General powers of every municipality and the governing body thereof.

1 In addition to the powers and authority granted by: (i) The
2 constitution of this state; (ii) other provisions of this chapter;
3 (iii) other general law; and (iv) any charter and to the extent not
4 inconsistent or in conflict with any of the foregoing except
5 special legislative charters, every municipality and the govern-
6 ing body thereof shall have plenary power and authority therein
7 by ordinance or resolution, as the case may require, and by
8 appropriate action based thereon:

9 (1) To lay off, establish, construct, open, alter, curb, recurb,
10 pave or repave and keep in good repair, or vacate, discontinue
11 and close, streets, avenues, roads, alleys, ways, sidewalks,
12 drains and gutters, for the use of the public, and to improve and
13 light the same and have them kept free from obstructions on or
14 over them which have not been authorized pursuant to the
15 succeeding provisions of this subdivision; and, subject to such
16 terms and conditions as the governing body shall prescribe, to
17 permit, without in any way limiting the power and authority
18 granted by the provisions of article sixteen of this chapter, any
19 person to construct and maintain a passageway, building or
20 other structure overhanging or crossing the airspace above a
21 public street, avenue, road, alley, way, sidewalk or crosswalk,
22 but before any such permission for any person to construct and
23 maintain a passageway, building or other structure overhanging
24 or crossing any such airspace is granted, a public hearing
25 thereon shall be held by the governing body after publication of
26 a notice of the date, time, place and purpose of such public
27 hearing has been published as a Class I legal advertisement in
28 compliance with the provisions of article three, chapter

29 fifty-nine of this code and the publication area for such publica-
30 tion shall be the municipality: *Provided*, That any such permit
31 so granted shall automatically cease and terminate in the event
32 of abandonment and nonuse thereof for the purposes intended
33 for a period of ninety days and all rights therein or thereto shall
34 revert to such municipality for its use and benefit;

35 (2) To provide for the opening and excavation of streets,
36 avenues, roads, alleys, ways, sidewalks, crosswalks and public
37 places belonging to the municipality and regulate the conditions
38 under which any such opening may be made;

39 (3) To prevent by proper penalties the throwing, depositing
40 or permitting to remain on any street, avenue, road, alley, way,
41 sidewalk, square or other public place any glass, scrap iron,
42 nails, tacks, wire, other litter or any offensive matter or any-
43 thing likely to injure the feet of individuals or animals or the
44 tires of vehicles;

45 (4) To regulate the use of streets, avenues, roads, alleys,
46 ways, sidewalks, crosswalks and public places belonging to the
47 municipality, including the naming or renaming thereof, and to
48 consult with local postal authorities, the division of highways
49 and the directors of county emergency communications centers
50 to assure uniform, nonduplicative addressing on a permanent
51 basis;

52 (5) To regulate the width of streets, avenues and roads and,
53 subject to the provisions of article eighteen of this chapter, to
54 order the sidewalks, footways and crosswalks to be paved,
55 repaved, curbed or recurbed and kept in good order, free and
56 clean, by the owners or occupants thereof or of the real property
57 next adjacent thereto;

58 (6) To establish, construct, alter, operate and maintain, or
59 discontinue, bridges, tunnels and ferries and approaches
60 thereto;

61 (7) To provide for the construction and maintenance of
62 water drains, the drainage of swamps or marshlands and
63 drainage systems;

64 (8) To provide for the construction, maintenance and
65 covering over of watercourses;

66 (9) To control and administer the waterfront and waterways
67 of the municipality and to acquire, establish, construct, operate
68 and maintain and regulate flood control works, wharves and
69 public landings, warehouses and all adjuncts and facilities for
70 navigation and commerce and the utilization of the waterfront
71 and waterways and adjacent property;

72 (10) To prohibit the accumulation and require the disposal
73 of garbage, refuse, debris, wastes, ashes, trash and other similar
74 accumulations whether on private or public property: *Provided,*
75 That, in the event the municipality annexes an area which has
76 been receiving solid waste collection services from a certifi-
77 cated solid waste motor carrier, the municipality and the solid
78 waste motor carrier may negotiate an agreement for continua-
79 tion of the private solid waste motor carrier services for a
80 period of time, not to exceed three years, during which time the
81 certificated solid waste motor carrier may continue to provide
82 exclusive solid waste collection services in the annexed
83 territory;

84 (11) To construct, establish, acquire, equip, maintain and
85 operate incinerator plants and equipment and all other facilities
86 for the efficient removal and destruction of garbage, refuse,
87 wastes, ashes, trash and other similar matters;

88 (12) To regulate or prohibit the purchase or sale of articles
89 intended for human use or consumption which are unfit for such

90 use or consumption, or which may be contaminated or other-
91 wise unsanitary;

92 (13) To prevent injury or annoyance to the public or
93 individuals from anything dangerous, offensive or unwhole-
94 some;

95 (14) To regulate the keeping of gunpowder and other
96 combustibles;

97 (15) To make regulations guarding against danger or
98 damage by fire;

99 (16) To arrest, convict and punish any individual for
100 carrying about his person any revolver or other pistol, dirk,
101 bowie knife, razor, slingshot, billy, metallic or other false
102 knuckles or any other dangerous or other deadly weapon of like
103 kind or character;

104 (17) To arrest, convict and punish any person for importing,
105 printing, publishing, selling or distributing any pornographic
106 publications;

107 (18) To arrest, convict and punish any person for keeping
108 a house of ill fame, or for letting to another person any house or
109 other building for the purpose of being used or kept as a house
110 of ill fame, or for knowingly permitting any house owned by
111 him or under his control to be kept or used as a house of ill
112 fame, or for loafing, boarding or loitering in a house of ill fame
113 or frequenting same;

114 (19) To prevent and suppress conduct and practices which
115 are immoral, disorderly, lewd, obscene and indecent;

116 (20) To prevent the illegal sale of intoxicating liquors,
117 drinks, mixtures and preparations;

118 (21) To arrest, convict and punish any individual for
119 driving or operating a motor vehicle while intoxicated or under
120 the influence of liquor, drugs or narcotics;

121 (22) To arrest, convict and punish any person for gambling
122 or keeping any gaming tables, commonly called "A, B, C" or
123 "E, O" table, or faro bank or keno table, or table of like kind,
124 under any denomination, whether the gaming table be played
125 with cards, dice or otherwise, or any person who shall be a
126 partner or concerned in interest, in keeping or exhibiting such
127 table or bank, or keeping or maintaining any gaming house or
128 place, or betting or gambling for money or anything of value;

129 (23) To provide for the elimination of hazards to public
130 health and safety and to abate or cause to be abated anything
131 which in the opinion of a majority of the governing body is a
132 public nuisance;

133 (24) To license, or for good cause to refuse to license in a
134 particular case, or in its discretion to prohibit in all cases, the
135 operation of pool and billiard rooms and the maintaining for
136 hire of pool and billiard tables notwithstanding the general law
137 as to state licenses for any such business and the provisions of
138 section four, article thirteen of this chapter; and when the
139 municipality, in the exercise of its discretion, shall have refused
140 to grant a license to operate a pool or billiard room, mandamus
141 shall not lie to compel such municipality to grant such license
142 unless it shall clearly appear that the refusal of the municipality
143 to grant such license is discriminatory or arbitrary; and in the
144 event that the municipality determines to license any such
145 business, the municipality shall have plenary power and
146 authority and it shall be the duty of its governing body to make
147 and enforce reasonable ordinances regulating the licensing and
148 operation of such businesses;

149 (25) To protect places of divine worship and to preserve
150 peace and order in and about the premises where held;

151 (26) To regulate or prohibit the keeping of animals or fowls
152 and to provide for the impounding, sale or destruction of
153 animals or fowls kept contrary to law or found running at large;

154 (27) To arrest, convict and punish any person for cruelly,
155 unnecessarily or needlessly beating, torturing, mutilating,
156 killing, overloading or overdriving or willfully depriving of
157 necessary sustenance any domestic animal;

158 (28) To provide for the regular building of houses or other
159 structures, for the making of division fences by the owners of
160 adjacent premises and for the drainage of lots by proper drains
161 and ditches;

162 (29) To provide for the protection and conservation of
163 shade or ornamental trees, whether on public or private prop-
164 erty, and for the removal of trees or limbs of trees in a danger-
165 ous condition;

166 (30) To prohibit with or without zoning the location of
167 occupied house trailers or mobile homes in certain residential
168 areas;

169 (31) To regulate the location and placing of signs, bill-
170 boards, posters and similar advertising;

171 (32) To erect, establish, construct, acquire, improve,
172 maintain and operate a gas system, a waterworks system, an
173 electric system or sewer system and sewage treatment and
174 disposal system, or any combination of the foregoing (subject
175 to all of the pertinent provisions of articles nineteen and twenty
176 of this chapter and particularly to the limitations or qualifica-
177 tions on the right of eminent domain set forth in said articles),
178 within or without the corporate limits of the municipality,

179 except that the municipality shall not erect any such system
180 partly without the corporate limits of the municipality to serve
181 persons already obtaining service from an existing system of
182 the character proposed and where such system is by the
183 municipality erected, or has heretofore been so erected, partly
184 within and partly without the corporate limits of the municipal-
185 ity, the municipality shall have the right to lay and collect
186 charges for service rendered to those served within and those
187 served without the corporate limits of the municipality and to
188 prevent injury to such system or the pollution of the water
189 thereof and its maintenance in a healthful condition for public
190 use within the corporate limits of the municipality;

191 (33) To acquire watersheds, water and riparian rights, plant
192 sites, rights-of-way and any and all other property and appurte-
193 nances necessary, appropriate, useful, convenient or incidental
194 to any such system, waterworks or sewage treatment and
195 disposal works, as aforesaid, subject to all of the pertinent
196 provisions of articles nineteen and twenty of this chapter;

197 (34) To establish, construct, acquire, maintain and operate
198 and regulate markets and prescribe the time of holding the
199 same;

200 (35) To regulate and provide for the weighing of articles
201 sold or for sale;

202 (36) To establish, construct, acquire, maintain and operate
203 public buildings, municipal buildings or city halls, auditoriums,
204 arenas, jails, juvenile detention centers or homes, motor vehicle
205 parking lots or any other public works;

206 (37) To establish, construct, acquire, provide, equip,
207 maintain and operate recreational parks, playgrounds and other
208 recreational facilities for public use and in this connection also
209 to proceed in accordance with the provisions of article two,
210 chapter ten of this code;

211 (38) To establish, construct, acquire, maintain and operate
212 a public library or museum or both for public use;

213 (39) To provide for the appointment and financial support
214 of a library board in accordance with the provisions of article
215 one, chapter ten of this code;

216 (40) To establish and maintain a public health unit in
217 accordance with the provisions of section two, article two,
218 chapter sixteen of this code, which unit shall exercise its powers
219 and perform its duties subject to the supervision and control of
220 the West Virginia board of health and state department of
221 health;

222 (41) To establish, construct, acquire, maintain and operate
223 hospitals, sanitarium and dispensaries;

224 (42) To acquire, by purchase, condemnation or otherwise,
225 land within or near the corporate limits of the municipality for
226 providing and maintaining proper places for the burial of the
227 dead and to maintain and operate the same and regulate
228 interments therein upon such terms and conditions as to price
229 and otherwise as may be determined by the governing body
230 and, in order to carry into effect such authority, the governing
231 body may acquire any cemetery or cemeteries already estab-
232 lished;

233 (43) To exercise general police jurisdiction over any
234 territory without the corporate limits owned by the municipality
235 or over which it has a right-of-way;

236 (44) To protect and promote the public morals, safety,
237 health, welfare and good order;

238 (45) To adopt rules for the transaction of business and the
239 government and regulation of its governing body;

240 (46) Except as otherwise provided, to require and take such
241 bonds from such officers, when deemed necessary, payable to
242 the municipality, in its corporate name, with such sureties and
243 in such penalty as the governing body may see fit, conditioned
244 upon the faithful discharge of their duties;

245 (47) To require and take from such employees and contrac-
246 tors such bonds in such penalty, with such sureties and with
247 such conditions, as the governing body may see fit;

248 (48) To investigate and inquire into all matters of concern
249 to the municipality or its inhabitants;

250 (49) To establish, construct, require, maintain and operate
251 such instrumentalities, other than free public schools, for the
252 instruction, enlightenment, improvement, entertainment,
253 recreation and welfare of the municipality's inhabitants as the
254 governing body may deem necessary or appropriate for the
255 public interest;

256 (50) To create, maintain and operate a system for the
257 enumeration, identification and registration, or either, of the
258 inhabitants of the municipality and visitors thereto, or such
259 classes thereof as may be deemed advisable;

260 (51) To appropriate and expend not exceeding twenty-five
261 cents per capita per annum for advertising the municipality and
262 the entertainment of visitors;

263 (52) To conduct programs to improve community relations
264 and public relations generally and to expend municipal revenue
265 for such purposes;

266 (53) To reimburse applicants for employment by the
267 municipality for travel and other reasonable and necessary
268 expenses actually incurred by such applicants in traveling to
269 and from such municipality to be interviewed;

270 (54) To provide revenue for the municipality and appropri-
271 ate the same to its expenses;

272 (55) To create and maintain an employee benefits fund
273 which shall not exceed one tenth of one percent of the annual
274 payroll budget for general employee benefits and which shall be
275 set up for the purpose of stimulating and encouraging employ-
276 ees to develop and implement cost-saving ideas and programs
277 and to expend moneys from such fund for such purposes;

278 (56) To enter into reciprocal agreements with governmental
279 subdivisions or agencies of any state sharing a common border
280 for the protection of people and property from fire and for
281 emergency medical services and for the reciprocal use of
282 equipment and personnel for such purposes; and

283 (57) To provide penalties for the offenses and violations of
284 law mentioned in this section, subject to the provisions of
285 section one, article eleven of this chapter, and such penalties
286 shall not exceed any penalties provided in this chapter and
287 chapter sixty-one of this code for like offenses and violations.

CHAPTER 212

**(H. B. 2877 — By Delegates Staton, Amores,
Trump, Fletcher and Browning)**

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, five, eighteen, and
twenty-one, article sixteen, chapter eight of the code of West
Virginia, one thousand nine hundred thirty-one, as amended; to

amend and reenact sections one-a, one-b, two, three, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fifteen, sixteen, seventeen and eighteen, article twenty of said chapter; to further amend said article by adding thereto two new sections, designated sections one-c and eleven-a; to amend and reenact sections one, two, three, nine, sixteen, seventeen, eighteen, nineteen, twenty-two, twenty-two-f, twenty-two-g and twenty-three-a, article thirteen, chapter sixteen of said code, all relating to establishment of stormwater systems within municipalities; municipal public works, stormwater systems and associated stormwater management programs, rates, fees and charges for stormwater services, termination of water service for combined systems for nonpayment of stormwater services, governmental entities subject to established rates, fees and charges for stormwater services, extraterritorial jurisdiction of municipalities, combined waterworks, sewerage and stormwater systems, acquisition thereof, extraterritorial powers, severance of combined systems, right of eminent domain, criteria for ordinance for combined system, bonds, revenue payable for bonds; liens of bondholders; power of municipalities to fix rates, fees and charges; "sinking funds," protection and enforcement of rights of bondholders, grants, loans and advances; alternative method for acquisition of combined system; acquisition and operation of stormwater works by sanitary boards or sanitary district, powers of sanitary board expanded to include stormwater works; rates, charges and fees for stormwater services; exception of bonds for stormwater works from taxation.

Be it enacted by the Legislature of West Virginia:

That sections one, five, eighteen, twenty-one, article sixteen, chapter eight be amended and reenacted; that sections one-a, one-b, two, three, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fifteen, sixteen, seventeen and eighteen, article twenty of said chapter be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections one-c and eleven-a; and that sections one, two, three, nine, sixteen, seventeen, eighteen, nineteen, twenty-two, twenty-two-f, twenty-two-g and

twenty-three-a, article thirteen, chapter sixteen be amended and reenacted, all to read as follows:

Chapter

8. Municipal Corporations.

16. Public Health.

CHAPTER 8. MUNICIPAL CORPORATIONS.

Article

16. Municipal Public Works; Revenue Bond Financing.

20. Combined Systems.

ARTICLE 16. MUNICIPAL PUBLIC WORKS; REVENUE BOND FINANCING.

PART I. DEFINITIONS; AUTHORIZATION OF MUNICIPAL PUBLIC WORKS.

§8-16-1. Definitions.

§8-16-5. Powers of board.

§8-16-18. Rates, fees or charges for services rendered by works.

§8-16-21. Governmental entities to pay established rates, fees or charges for services rendered to it or them.

§8-16-1. Definitions.

1 As used in this article, the following terms shall have the
2 following meanings unless the text clearly indicates otherwise.

3 (a) "Municipal public works" or "works" or "projects"
4 means the construction, reconstruction, establishment, acquisi-
5 tion, improvement, renovation, extension, enlargement, in-
6 crease, equipment, maintenance, repair (including replace-
7 ments) and operation of jails, jail facilities, municipal buildings,
8 police stations, fire stations, libraries, museums, other public
9 buildings, incinerator plants, land fill or other garbage disposal
10 systems, hospitals, piers, docks, terminals, airports, drainage
11 systems, flood control systems, stormwater systems and associ-
12 ated stormwater management program, flood walls, culverts,

13 bridges (including approaches, causeways, viaducts, under-
14 passes and connecting roadways), public markets, cemeteries,
15 motor vehicle parking facilities (including parking lots, build-
16 ings, ramps, curb-line parking, meters and other facilities con-
17 sidered necessary, appropriate, useful, convenient or incidental
18 to the regulation, control and parking of motor vehicles), farms,
19 dormitories, apartments and other housing facilities for the
20 students and faculties of institutions of higher education; facili-
21 ties providing housing for the elderly, including, but not limited
22 to, life care facilities, congregate living facilities and adult resi-
23 dential facilities, stadiums, gymnasiums, sports arenas, auditori-
24 ums, public recreation centers, public recreation parks, swim-
25 ming pools, roller skating rinks, ice skating rinks, tennis courts,
26 golf courses, polo grounds, or the grading, regrading, paving,
27 repaving, surfacing, resurfacing, curbing, recurbing, widening
28 or otherwise improving of any street, avenue, road, alley or
29 way, or the building or renewing of sidewalks, where works or
30 projects will be made self-supporting, and the cost thereof,
31 together with the interest thereon, will be returned within a
32 reasonable period, not exceeding forty years, by means of tolls,
33 fees, rents, special assessments or charges other than taxation;
34 and the terms shall also mean any works or project as a whole,
35 and all integral parts thereof, including all necessary, appropri-
36 ate, useful, convenient or incidental appurtenances and equip-
37 ment in connection with any one or more of the above.

38 (b) "Stormwater systems" means a stormwater system in its
39 entirety or any integral part thereof used to collect and dispose
40 of stormwater and an associated stormwater management pro-
41 gram. It includes all facilities, structures and natural water
42 courses used for collecting and conducting stormwater to,
43 through and from drainage areas to the points of final outlet
44 including, but not limited to, any and all of the following: Inlets,
45 conduits, outlets, channels, ponds, drainage easements, water
46 quality facilities, catch basins, ditches, streams, gulches, flumes,
47 culverts, siphons, retention or detention basins, dams,
48 floodwalls, pipes, flood control systems, levies and pumping

49 stations. The term “stormwater systems” shall not include high-
50 ways, road and drainage easements, and/or stormwater facilities
51 constructed, owned and/or operated by the West Virginia Divi-
52 sion of Highways.

53 (c) “Stormwater management program” means those activi-
54 ties associated with the management, operation, maintenance
55 and control of stormwater and stormwater systems, and shall
56 include, but not be limited to, public education, stormwater and
57 surface runoff water quality improvement, mapping, planning,
58 flood control, inspection, enforcement and any other activities
59 required by state and federal law. The term “stormwater man-
60 agement program” shall not include those activities associated
61 with the management, operation, maintenance and control of
62 highways, road and drainage easements, and/or stormwater
63 facilities constructed, owned and/or operated by the West Vir-
64 ginia Division of Highways without the express agreement of
65 the commissioner of highways.

PART III. GENERAL POWERS AND AUTHORITY.

§8-16-5. Powers of board.

1 The board shall have plenary power and authority to take
2 all steps and proceedings, and to make and enter into all con-
3 tracts or agreements necessary, appropriate, useful, convenient
4 or incidental to the performance of its duties and the execution
5 of its powers and authority under this article: *Provided*, That
6 any contract or agreement relating to the financing, or the con-
7 struction, reconstruction, establishment, acquisition, improve-
8 ment, renovation, extension, enlargement, increase, equipment,
9 operation or maintenance of any such works, and any trust in-
10 denture with respect thereto as hereafter provided for, shall be
11 approved by the governing body or bodies.

12 The board may employ engineers, architects, inspectors,
13 superintendents, managers, collectors, attorneys and such other

14 employees as in its judgment may be necessary in the execution
15 of its powers and duties, and may fix their compensation, all of
16 whom shall do such work as the board may direct. All compen-
17 sation and expenses incurred in carrying out the provisions of
18 this article shall be paid solely from funds provided under the
19 authority of this article, and the board shall not exercise or carry
20 out any power or authority herein given it so as to bind said
21 board or any municipality beyond the extent to which money
22 shall have been, or may be provided under the authority of this
23 article.

24 No contract or agreement with any contractor or contractors
25 for labor or materials, or both, exceeding in amount the sum of
26 ten thousand dollars shall be made without advertising for bids,
27 which bids shall be publicly opened and an award made to the
28 lowest responsible bidder, with power and authority in the
29 board to reject any and all bids.

30 After the construction, reconstruction, establishment, acqui-
31 sition, renovation or equipment of any such works, the board
32 shall maintain, operate, manage and control the same, and may
33 order and complete any improvements, extensions, enlarge-
34 ments, increase or repair (including replacements) of and to the
35 works that the board may consider expedient, if funds therefor
36 be available, or are made available, as provided in this article,
37 and shall establish rules for the use, maintenance and operation
38 of the works, and do all things necessary or expedient for the
39 successful operation thereof, and for stormwater systems and
40 associated stormwater management programs, those activities
41 which include, but are not limited to, stormwater and surface
42 runoff water quality improvement activities necessary to com-
43 ply with all federal and state requirements. All public ways or
44 public works damaged or destroyed by the board in carrying out
45 its authority under this article shall be restored or repaired by
46 the board and placed in their original condition, as nearly as
47 practicable, if requested so to do by proper authority, out of the
48 funds provided under the authority of this article.

PART VI. IMPOSITION OF RATES, FEES OR CHARGES.

§8-16-18. Rates, fees or charges for services rendered by works.

1 The governing body shall have plenary power and authority
2 and it shall be its duty, by ordinance, to establish and maintain
3 just and equitable rates, fees or charges for the use and services
4 rendered, or the improvement or protection of property, not to
5 include highways, road and drainage easements, and/or storm-
6 water facilities constructed, owned and/or operated by the West
7 Virginia division of highways, provided or afforded, by such
8 works, to be paid by the person using the same, receiving the
9 services thereof, or owning the property improved or protected
10 thereby, and may readjust rates, fees or charges from time to
11 time.

12 When two or more municipalities take joint action under
13 the provisions of this article, the rates, fees or charges shall be
14 established by each participating municipality, with the concur-
15 rence of the other participating municipality or municipalities as
16 to the amount of the rates, fees or charges, and such rates, fees
17 or charges may be the same with respect to each municipality,
18 or they may be different.

19 Rates, fees or charges heretofore or hereafter established
20 and maintained for the improvement or protection of property,
21 not to include highways, road and drainage easements, and/or
22 stormwater facilities constructed, owned and/or operated by the
23 West Virginia division of highways, provided or afforded by a
24 municipal flood control system or flood walls, to be paid by the
25 person owning the property improved or protected thereby,
26 shall be collectible and enforceable from the time provided in
27 any such ordinance, any provision of this or any other law to the
28 contrary notwithstanding, if, at such time, such works, though
29 not yet fully completed, are nearing completion and the govern-
30 ing body is reasonably assured that the works will be completed
31 and placed in operation without unreasonable delay.

32 All rates, fees or charges shall be sufficient in each year for
33 the payment of the proper and reasonable expenses of repair
34 (including replacements), maintenance and operation of the
35 works, and for the payment of the sums herein required to be
36 paid into the sinking fund. Revenues collected pursuant to the
37 provisions of this section are considered the revenues of the
38 works. No such rates, fees or charges shall be established until
39 after a public hearing at which all the users of the works and
40 owners of the property served, or to be served thereby, and
41 others interested, shall have an opportunity to be heard concern-
42 ing the proposed rates, fees or charges.

43 After introduction of the proposed ordinance fixing the
44 rates, fees or charges and before the same is finally adopted,
45 notice of such hearing, setting forth the proposed schedule of
46 such rates, fees or charges, shall be given by publishing the
47 same as a Class I-0 legal advertisement in compliance with the
48 provisions of article three, chapter fifty-nine of this code, and
49 the publication area for the publication shall be such municipal-
50 ity or each such municipality, as the case may be. Said notice
51 shall be published at least five days before the date fixed in such
52 notice for the hearing, which hearing may be adjourned from
53 time to time. No other or further notice to parties in interest
54 shall be required.

55 After such hearing the ordinance establishing rates, fees or
56 charges, either as originally proposed or introduced, or as modi-
57 fied and amended, shall be adopted and put into effect. A copy
58 of the schedule of such rates, fees and charges so established
59 shall be kept on file in the office of the board having charge of
60 such works, and also in the office of the governing body or
61 bodies, and shall be open to inspection by all parties in interest.

62 The rates, fees or charges so established for any class of
63 users or property served shall be extended to cover any addi-
64 tional class of users or property thereafter served which fall
65 within the same class, without the necessity of any hearing or

66 notice. Any change or adjustment of rates, fees or charges may
67 be made in the same manner as such rates, fees or charges were
68 originally established as provided in this section. The aggregate
69 of the rates, fees or charges shall always be sufficient for the
70 expenses of repair (including replacements), maintenance and
71 operation, and for the sinking fund payments.

72 If any rate, fee or charge so established shall not be paid
73 within thirty days after the same is due, the amount thereof,
74 together with a penalty of ten percent and reasonable attorney's
75 fees, may be recovered by the board in a civil action in the
76 name of the municipality or municipalities, and in the case of
77 rates, fees or charges due for services rendered, such rates, fees
78 or charges, if not paid when due, may, if the governing body so
79 provide in the ordinance provided for under section seven of
80 this article, constitute a lien upon the premises served by such
81 works, which lien may be foreclosed against such lot, parcel of
82 land or building so served, in accordance with the laws relating
83 to the foreclosure of liens on real property. Upon failure of any
84 person receiving any such service to pay for the same when
85 due, the board may discontinue such service without notice.

PART VIII. RATES, FEES OR CHARGES FOR MUNICIPALITIES.

§8-16-21. Governmental entities to pay established rates, fees or charges for services rendered to it or them.

1 (a) The municipality or municipalities issuing such bonds
2 shall be subject to the same rates, fees or charges established as
3 provided in this article, or to rates, fees or charges established in
4 harmony therewith, for service rendered to the municipality or
5 municipalities and shall pay such rates, fees or charges, when
6 due, from corporate funds, and the same shall be considered to
7 be a part of the revenues of the works as defined in this article,
8 and may be applied as provided in this article, for the applica-
9 tion of such revenue.

10 (b) The municipality or municipalities and any county, state
11 and federal government served by the services of the storm-
12 water system shall be subject to the same rates, fees or charges
13 established as provided in this article for stormwater services, or
14 to rates, fees or charges established in harmony therewith, for
15 service rendered to the governmental entity and shall pay such
16 rates, fees or charges, when due, from corporate funds, and the
17 same is considered to be a part of the revenues of the works as
18 defined in this article, and may be applied as provided in this
19 article, for the application of such revenue. However, no rates,
20 fees or charges for stormwater services may be assessed against
21 highways, road and drainage easements, and/or stormwater
22 facilities constructed, owned and/or operated by the West Vir-
23 ginia division of highways without the express agreement of the
24 commissioner of highways.

ARTICLE 20. COMBINED SYSTEMS

- §8-20-1a. Acquisition and operation of combined systems; extension beyond corporate limits; definitions.
- §8-20-1b. Cooperation with other governmental units.
- §8-20-1c. Severance of combined system.
- §8-20-2. Right of eminent domain; limitations.
- §8-20-3. Ordinance describing project; contents.
- §8-20-5. Amount, negotiability and execution of bonds; refund of outstanding obligations or securities by sale or exchange of bonds.
- §8-20-6. Bonds payable solely from revenues; not to constitute municipal indebtedness.
- §8-20-7. Lien of bondholders.
- §8-20-8. Covenants with bondholders.
- §8-20-9. Operating contract.
- §8-20-10. Power and authority of municipality to enact ordinances and make rules and regulations and fix rates, fees or charges; change in rates, fees or charges; failure to cure delinquency; delinquent rates, fees or charges as liens; civil action for recovery thereof; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.
- §8-20-11. Discontinuance of water service for nonpayment of rates or charges.
- §8-20-11a. Governmental entities subject to established rates.
- §8-20-12. Use of revenues; sinking fund.
- §8-20-13. System of accounts; audit.

- §8-20-15. Protection and enforcement of rights of bondholders, etc.; receivership.
§8-20-16. Grants, loans and advances.
§8-20-17. Additional and alternative method for constructing, etc., and financing combined system; cumulative authority.
§8-20-18. Alternative procedure for acquisition, construction, etc., of combined system.

§8-20-1a. Acquisition and operation of combined systems; extension beyond corporate limits; definitions.

1 (a) Any municipality may acquire, construct, establish and
2 equip and thereafter repair, maintain and operate a combined
3 waterworks, sewerage and stormwater system either wholly
4 within or partly within and partly without the corporate limits
5 thereof under the provisions of this article, and any municipality
6 owning and operating a waterworks and sewerage system, but
7 not a stormwater system, may acquire, construct, establish and
8 equip the stormwater system which it does not then own and
9 operate, and such municipality may provide by ordinance that
10 when such stormwater system shall have been acquired, con-
11 structed, established and equipped, the same shall thereafter be
12 owned, repaired, maintained and operated as a combined under-
13 taking under the provisions of this article, and any municipality
14 already owning and operating an existing waterworks system,
15 sewerage system, and stormwater system, may by ordinance
16 combine the same into a single undertaking under the provi-
17 sions of this article. However, no municipality may acquire,
18 construct, establish and equip or thereafter repair, maintain and
19 operate a combined waterworks, sewerage and stormwater
20 system which includes highways, road and drainage easements,
21 and/or stormwater facilities constructed, owned and/or operated
22 by the West Virginia division of highways without the express
23 agreement of the commissioner of highways.

24 (b) Any municipality which has combined its waterworks,
25 sewerage system and stormwater systems under the provisions
26 of this article, or pursuant to the provisions of any other law,
27 may hereafter construct extensions, additions, betterments and

28 improvements to any of the systems, any combination thereof,
29 or all of the waterworks, sewerage and stormwater systems of
30 said combined waterworks, sewerage and stormwater system,
31 and may finance the acquisition, construction, establishment
32 and equipment thereof, or the construction or extensions, addi-
33 tions, betterments and improvements thereof by the issuance of
34 revenue bonds under the provisions of this article.

35 (c) Notwithstanding the provisions of any other law or
36 charter to the contrary, any such municipality may serve and
37 supply the area included within twenty miles outside its corpo-
38 rate limits with either the water, sewer or stormwater services,
39 any combination of such services or all such services, of its
40 combined waterworks, sewerage and stormwater system; pro-
41 vided that such water, sewer or stormwater services and facili-
42 ties shall not be served or supplied within the corporate limits of
43 any municipality without the consent of the governing body of
44 such municipality: *Provided*, That for stormwater systems,
45 within the twenty miles beyond the municipality's corporate
46 limits the only areas the municipality may serve and supply
47 shall be those areas from which stormwater affects or drains
48 into the municipality.

49 (d) As used in this article, the following terms shall have
50 the following meanings unless the text clearly indicates other-
51 wise.

52 (1) "Stormwater system" means a stormwater system in its
53 entirety or any integral part thereof used to collect and dispose
54 of stormwater and an associated stormwater management pro-
55 gram. It includes all facilities, structures and natural water
56 courses used for collecting and conducting stormwater to,
57 through and from drainage areas to the points of final outlet,
58 including, but not limited to, any and all of the following: Inlets,
59 conduits, outlets, channels, ponds, drainage ways, easements,
60 water quality facilities, catch basins, ditches, streams, gulches,
61 flumes, culverts, siphons, retention or detention basins, dams,

62 floodwalls, pipes, flood control systems, levies and pumping
63 stations. The term “stormwater system” shall not include high-
64 ways, road and drainage easements, and/or stormwater facilities
65 constructed, owned and/or operated by the West Virginia divi-
66 sion of highways.

67 (2) “Combined waterworks, sewerage and stormwater sys-
68 tem” means a waterworks, sewerage and stormwater system
69 which a municipality determines by ordinance to operate in
70 combination.

71 (3) “Combined system” means either a combined water-
72 works, sewerage and stormwater system, or a combined water-
73 works and sewerage system.

74 (4) “Stormwater management program” means those activi-
75 ties associated with the management, operation and mainte-
76 nance and control of stormwater and stormwater systems, and
77 shall include and not be limited to public education, stormwater
78 and surface runoff water quality improvement, mapping, plan-
79 ning, flood control, inspection, enforcement and any other ac-
80 tivities required by state and federal law. The term “stormwater
81 management program” shall not include those activities associ-
82 ated with the management, operation, maintenance and control
83 of highways, road and drainage easements, and/or stormwater
84 facilities constructed, owned and/or operated by the West Vir-
85 ginia division of highways without the express agreement of the
86 commissioner of highways.

§8-20-1b. Cooperation with other governmental units.

1 In carrying out any lawful purpose prescribed by this arti-
2 cle, any municipality may, in the exercise of its powers, duties
3 and responsibilities, cooperate or join with the state of West
4 Virginia or any political subdivision, agency, board, commis-
5 sion, office or department thereof, however designated, or with

6 the United States of America or any agency or department
7 thereof.

§8-20-1c. Severance of combined system.

1 Any municipality which has combined its waterworks and
2 sewerage systems or waterworks, sewerage and stormwater
3 systems, under the provisions of this article, or pursuant to pro-
4 visions of any other law, may hereafter sever said combined
5 system if the following conditions are met:

6 (a) An ordinance is enacted by the governing body of the
7 municipality severing the combined system into separate sys-
8 tems.

9 (b) If revenue bonds or notes or other obligations with a
10 lien on or pledge of the revenues of said combined system, or
11 any part thereof, are outstanding, then the municipality must
12 provide in said ordinance that the severance of the combined
13 system is not effective until all such outstanding revenue bonds
14 or notes or other obligations with a lien on or pledge of the
15 revenues of the system, or any part thereof, are paid and the
16 method for paying said outstanding revenue bonds or notes or
17 other obligations. For the purposes of this section, said munic-
18 ipality may provide for payment of said outstanding revenue
19 bonds or notes or other obligations by:

20 (1) Depositing moneys and funds with the West Virginia
21 municipal bond commission or in escrow with a corporate
22 trustee, which may be a trust company or bank having powers
23 of a trust company within or without the state of West Virginia
24 selected by the issuer to pay interest when due and to pay prin-
25 cipal when due, whether at maturity or earlier redemption;

26 (2) Depositing securities with the municipal bond commis-
27 sion or said escrow trustee, the principal of and earnings on
28 which will provide moneys sufficient to pay interest when due

29 and to pay principal when due, whether at maturity or earlier
30 redemption; or

31 (3) Depositing with the municipal bond commission or said
32 escrow trustee any combination of the foregoing sufficient to
33 pay interest when due and to pay principal when due, whether at
34 maturity or earlier redemption.

35 (c) If the combined system is under the supervision and
36 control of a separate committee, board or commission, then the
37 governing body of the municipality must provide for the disso-
38 lution of the committee, board or commission, and the creation
39 of other committees, boards or commissions as may be required
40 by law.

§8-20-2. Right of eminent domain; limitations.

1 For the purpose of acquiring, constructing, establishing or
2 extending any system within a combined system, or a combined
3 system, or for the purpose of constructing any additions,
4 betterments or improvements to any system within a combined
5 system, or a combined system, or for the purpose of acquiring
6 any property necessary, appropriate, useful, convenient or inci-
7 dental for or to any system within a combined system, or com-
8 bined system, under the provisions of this article, the municipa-
9 lity shall have the right of eminent domain as provided in chap-
10 ter fifty-four of this code: *Provided*, That such right of eminent
11 domain for the acquisition of a complete privately owned water-
12 works system may not be exercised without prior approval of
13 the public service commission, and in no event shall any munic-
14 ipality construct, establish or extend beyond the corporate limits
15 of the municipality a municipal waterworks system or a com-
16 bined system under the provisions of this article to supply ser-
17 vice in competition with an existing privately or municipally
18 owned waterworks system or combined system in the municipa-
19 lity or within the proposed extension of the system, unless,
20 except in the case of a stormwater system, a certificate of public

21 convenience and necessity therefor shall have been issued by
22 the public service commission: *Provided, however,* That the
23 power of eminent domain provided in this section shall not
24 extend to highways, road and drainage easements, and/or storm-
25 water facilities constructed, owned and/or operated by the West
26 Virginia division of highways without the express agreement of
27 the commissioner of highways.

§8-20-3. Ordinance describing project; contents.

1 The governing body of any municipality availing itself of
2 the provisions of this article shall adopt an ordinance describing
3 in a general way the contemplated project. If it is intended to
4 include in the combined system any existing waterworks system
5 or any existing sewerage system, or both, or if applicable, any
6 existing stormwater system, or any of them, or all of them, the
7 ordinance shall provide that it or they be so included in the
8 combined system and shall describe in a general way such exist-
9 ing waterworks or sewerage system or both, or, if applicable,
10 any existing stormwater system, or any of them, or all of them,
11 to be included in the combined system. The ordinance shall
12 state the means provided for refunding any obligations unpaid
13 and outstanding payable solely from the revenues of any such
14 waterworks or sewerage system, or both, or if applicable, any
15 existing stormwater system, or any of them, or all of them. The
16 ordinance shall determine the period of usefulness of the con-
17 templated project.

18 If it is intended to acquire, construct, establish and equip a
19 combined system or any part thereof, or to construct extensions,
20 additions, betterments and improvements to either the water-
21 works system or the sewerage system of the combined system,
22 or both, or if applicable, any existing stormwater system, or any
23 of them, or all of them, the ordinance shall describe in a general
24 way the works or property or system to be acquired, con-
25 structed, established or equipped or the extensions, additions,
26 betterments and improvements to be constructed.

27 The ordinance shall fix the amount of revenue bonds pro-
28 posed to be issued, the interest rate or rates, and any other de-
29 tails in connection with the bonds considered advisable. The
30 ordinance may state that the bonds, or such ones thereof as may
31 be specified, shall, to the extent and in the manner prescribed,
32 be subordinated and be junior in standing, with respect to prin-
33 cipal and interest and the security thereof, to such other bonds
34 as are designated in the ordinance.

**§8-20-5. Amount, negotiability and execution of bonds; refund of
outstanding obligations or securities by sale or ex-
change of bonds.**

1 For the purpose of defraying the cost of acquisition, con-
2 struction, establishment or equipment of any system within a
3 combined system, or a combined system, and for the purpose of
4 paying the cost of constructing any extensions, additions,
5 betterments or improvements to any of the systems of said
6 combined system, or all of them, any such municipality may
7 issue revenue bonds under the provisions of this article.

8 All such bonds may be authorized, issued and sold pursuant
9 to ordinance in installments at different times or an entire issue
10 or series may be sold at one time. Such bonds shall bear interest
11 at a rate not to exceed twelve percent per annum, payable at
12 such times, and shall mature within the period of usefulness of
13 the project involved, to be determined by the governing body
14 and in any event within a period of not more than forty years.
15 The bonds may be in denomination or denominations, may be
16 in such form, either coupon or registered, may carry registration
17 and conversion privileges, may be executed in such manner,
18 may be payable in such medium of payment, at such place or
19 places, may be subject to terms of redemption, with or without a
20 premium, may be declared to become due before the maturity
21 date thereof, may provide for the replacement of mutilated,
22 destroyed, stolen or lost bonds, may be authenticated in such
23 manner and upon compliance with such conditions, and may

24 contain other terms and covenants, as may be provided by ordi-
25 nance of the governing body of the municipality. Notwithstand-
26 ing the form or tenor thereof, and in the absence of an express
27 recital on the face thereof that the bond is nonnegotiable, all
28 bonds shall at all times be, and shall be treated as, negotiable
29 instruments for all purposes.

30 The bonds and the interest thereon, together with all proper-
31 ties and facilities of the municipality owned or used in connec-
32 tion with the combined system, and all the moneys, revenues
33 and other income of such municipality derived from the com-
34 bined system shall be exempt from all taxation by this state or
35 any county, municipality, political subdivision or agency
36 thereof. Bonds may be sold in such manner as the governing
37 body shall determine. If any bonds shall be issued to bear inter-
38 est at a rate of twelve percent per annum, the price at which
39 they may be sold shall be such that the interest cost to the mu-
40 nicipality of the proceeds of the bonds may not exceed thirteen
41 percent per annum computed to maturity according to the stan-
42 dard table of bond values.

43 If the governing body of the municipality determines to sell
44 any revenue bonds of such combined system for refunding
45 purposes, the proceeds of the bonds shall be deposited at the
46 place of payment of the bonds, obligations or securities being
47 refunded thereby.

48 In case any officer whose signature appears on the bonds or
49 coupons attached thereto shall cease to be such officer before
50 the delivery of the bonds to the purchaser, such signature shall
51 nevertheless be valid and sufficient for all purposes, with the
52 same effect as if he or she had remained in office until the de-
53 livery of the bonds. All signatures on the bonds or coupons and
54 the corporate seal may be mechanically reproduced if autho-
55 rized in the ordinance authorizing the issuance of the bonds.
56 The bonds shall have all the qualities of negotiable instruments
57 under the laws of this state.

58 Whenever a waterworks and sewerage system or storm-
59 water system, if applicable, is included in a combined system
60 under the provisions of this article and there are unpaid and
61 outstanding revenue bonds or any other obligations or securities
62 previously issued which are payable solely from the revenues of
63 the waterworks or the sewerage system or stormwater system, if
64 applicable, or any part thereof, such outstanding bonds, obliga-
65 tions or securities may be refunded by the issuance and sale or
66 exchange therefor of revenue bonds to be issued under the pro-
67 visions of this article.

68 Whenever any outstanding bonds, obligations or securities
69 previously issued which are payable solely from the revenues of
70 any waterworks or sewerage system, or stormwater system, if
71 applicable, included in a combined system under the provisions
72 of this article are refunded and the refunding is to be accom-
73 plished by exchange, such outstanding bonds, obligations or
74 securities shall be surrendered and exchanged for revenue
75 bonds of such combined system of a total principal amount
76 which shall not be more and may be less than the principal
77 amount of the bonds, obligations or securities surrendered and
78 exchanged plus the interest to accrue thereon to the date of
79 surrender and exchange, and if the refunding is to be accom-
80 plished through the sale of revenue bonds of such combined
81 system the total principal amount of such revenue bonds which
82 may be sold for refunding purposes shall not exceed the princi-
83 pal amount of the bonds, obligations or securities being re-
84 funded plus the interest to accrue thereon to the retirement date
85 or the next succeeding interest payment date, whichever date
86 may be earlier.

87 Provision may be made that each bond to be exchanged for
88 refunding bonds shall be kept intact and shall not be canceled or
89 destroyed until the refunding bonds, and interest thereon, have
90 been finally paid and discharged, but each bond shall be
91 stamped with a legend to the effect that the same has been re-
92 funded pursuant to the provisions of this article.

§8-20-6. Bonds payable solely from revenues; not to constitute municipal indebtedness.

1 Bonds issued under the provisions of this article shall be
2 payable solely from the revenues derived from the combined
3 system, and the bonds may not in any event constitute an in-
4 debtedness of such municipality within the meaning of any
5 constitutional or statutory provision or limitation and it shall be
6 plainly stated on the face of each bond that the same has been
7 issued under the provisions of this article, and that it does not
8 constitute an indebtedness of the municipality within any con-
9 stitutional or statutory provision or limitation. The ordinance
10 authorizing the issuance of the bonds may contain such cove-
11 nants and restrictions upon the issuance of additional revenue
12 bonds thereafter as may be considered necessary or advisable
13 for the assurance of payment of the bonds thereby authorized
14 and as may thereafter be issued.

§8-20-7. Lien of bondholders.

1 There shall be and there is hereby created and granted a
2 statutory mortgage lien upon such combined system which shall
3 exist in favor of the holder of bonds hereby authorized to be
4 issued, and each of them, and to and in favor of the holder of
5 the coupons attached to said bonds, and such combined system
6 shall remain subject to such statutory mortgage lien until pay-
7 ment in full of the principal of and interest upon said bonds.
8 However, no lien may attach to any portion of any highways,
9 road or drainage easements or stormwater facilities constructed,
10 owned or operated by the West Virginia division of highways.

11 Any municipality in acquiring an existing waterworks sys-
12 tem may provide that payment therefor shall be made by issuing
13 revenue bonds and delivering the same at such prices as may be
14 agreed upon within the limitations prescribed in section five
15 hereof. Any revenue bonds so issued in payment for an existing
16 waterworks system shall for all purposes be regarded as partak-

17 ing of the nature of and as being secured by a purchase money
18 mortgage upon the property so acquired; and the holders thereof
19 shall have, in addition to any other remedies and rights pre-
20 scribed by this article, remedies and rights as may now or here-
21 after exist in law in the case of purchase money mortgages.

§8-20-8. Covenants with bondholders.

1 Any ordinance authorizing the issuance of bonds hereunder,
2 or any trust indenture with any banking institution or trust com-
3 pany, within or without the state, for the security of said bonds,
4 which any municipality is hereby empowered and authorized to
5 enter into and execute, may contain covenants with the holders
6 of the bonds as to:

7 (a) The purpose or purposes to which the proceeds of sale
8 of bonds or the revenues derived from said combined system
9 may be applied and the securing, use and disposition thereof,
10 including, if considered desirable, the appointment of a trustee
11 or depository for any of the funds;

12 (b) The pledging of all or any part of the revenues derived
13 from the ownership, control or operation of such combined
14 system, including any part thereof heretofore or hereafter ac-
15 quired, constructed, established, extended, equipped, added to,
16 bettered or improved or derived from any other sources, to the
17 payment of the principal of or interest thereon of bonds issued
18 hereunder and for reserve or other funds as may be considered
19 necessary or desirable;

20 (c) The fixing, establishing and collecting of rates, fees or
21 charges for the use of the services and facilities of the combined
22 system, including the parts thereof heretofore or hereafter ac-
23 quired, constructed, established, extended, equipped, added to,
24 bettered or improved and the revision of same from time to
25 time, as will always provide revenues at least sufficient to pro-
26 vide for all expenses of repair, maintenance and operation of

27 such combined system, the payment of the principal of and
28 interest upon all bonds or other obligations payable from the
29 revenues of such combined system, and all reserve and other
30 funds required by the terms of the ordinance authorizing the
31 issuance of bonds;

32 (d) The transfer from the general funds of the municipality
33 to the account or accounts of the combined system of an amount
34 equal to the cost of furnishing the municipality or any of its
35 departments, boards or agencies with the services and facilities
36 of such combined system;

37 (e) Limitations or restrictions upon the issuance of addi-
38 tional bonds or other obligations payable from the revenues of
39 such combined system, and the rank or priority, as to lien and
40 source and security for payment from the revenues of such
41 combined system, between bonds payable from the revenues;

42 (f) The manner and terms upon which all bonds and other
43 obligations issued hereunder may be declared immediately due
44 and payable upon the happening of a default in the payment of
45 the principal of or interest thereon, or in the performance of any
46 covenant or agreement with bondholders, and the manner and
47 terms upon which defaults may be declared cured and the accel-
48 eration of the maturity of the bonds rescinded and repealed;

49 (g) Budgets for the annual repair, maintenance and opera-
50 tion of such combined system and restrictions and limitations
51 upon expenditures for the purposes, and the manner of adop-
52 tion, modification, repeal or amendment thereof, including the
53 approval of the budgets by consulting engineers designated by
54 holders of bonds issued hereunder;

55 (h) The amounts of insurance to be maintained upon the
56 combined system, or any part thereof, and the use and disposi-
57 tion of the proceeds of any insurance; and

58 (i) The keeping of books of account, relating to such under-
59 taking and the audit and inspection thereof, and the furnishing
60 to the holders of bonds issued hereunder or their representa-
61 tives, reports prepared, certified or approved by accountants
62 designated or approved by the holders of bonds issued hereun-
63 der.

64 Any ordinance or trust indenture may also contain other
65 additional covenants as shall be considered necessary or desir-
66 able for the security of the holders of bonds issued under the
67 provisions of this article, notwithstanding that other covenants
68 are not expressly enumerated above, it being the intention
69 hereof to grant to municipalities plenary power and authority to
70 make any and all covenants or agreements necessary in order to
71 secure greater marketability for bonds issued hereunder as fully
72 and to the same extent as covenants or agreements could be
73 made by a private corporation rendering similar services and
74 facilities and to grant to municipalities full and complete power
75 and authority to enter into any contracts, covenants or agree-
76 ments with holders of bonds issued hereunder not inconsistent
77 with the constitution of this state.

§8-20-9. Operating contract.

1 Any municipality may enter into contracts or agreements
2 with any persons for: (1) The repair, maintenance and operation
3 and management of the facilities and properties of the combined
4 system, or any part thereof; or (2) the collection and disburse-
5 ment of the income and revenues thereof, or for both (1) and
6 (2), for the period of time and under terms and conditions as
7 shall be agreed upon between the municipality and such per-
8 sons. Any municipality shall have plenary power and authority
9 to provide in the ordinance authorizing the issuance of bonds
10 hereunder, or in any trust indenture securing the bonds, that the
11 contracts or agreements shall be valid and binding upon the
12 municipality as long as any of the bonds, or interest thereon, is
13 outstanding and unpaid.

§8-20-10. Power and authority of municipality to enact ordinances and make rules and regulations and fix rates, fees or charges; change in rates, fees or charges; failure to cure delinquency; delinquent rates, fees or charges as liens; civil action for recovery thereof; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.

1 (a) The governing body of any municipality availing itself
2 of the provisions of this article shall have plenary power and
3 authority to make, enact and enforce all needful rules and regu-
4 lations for the repair, maintenance and operation and manage-
5 ment of the combined system of such municipality and for the
6 use thereof, and shall also have plenary power and authority to
7 make, enact and enforce all needful rules and regulations and
8 ordinances for the care and protection of any such system,
9 which may be conducive to the preservation of the public
10 health, comfort and convenience and to rendering the water
11 supply of such municipality pure, the sewerage harmless insofar
12 as it is reasonably possible so to do, and if applicable properly
13 collecting and controlling the stormwater as is reasonably possi-
14 ble so to do: *Provided*, That no municipality may make, enact
15 or enforce any rule, regulation or ordinance regulating any
16 highways, road or drainage easements or stormwater facilities
17 constructed, owned or operated by the West Virginia division of
18 highways except in accordance with chapter twenty-nine-a of
19 this code.

20 Any municipality shall have plenary power and authority to
21 charge the users for the use and service of combined system and
22 to establish rates, fees or charges for such purpose. Separate
23 rates, fees or charges may be fixed for the water and sewer
24 services respectively, and, if applicable, the stormwater ser-
25 vices, or combined rates, fees or charges for the combined water
26 and sewer services, and, if applicable, the stormwater services.
27 Such rates, fees or charges, whether separate or combined, shall
28 be sufficient at all times to pay the cost of repair, maintenance

29 and operation of the combined system, provide an adequate
30 reserve fund and adequate depreciation fund and pay the princi-
31 pal of and interest upon all revenue bonds issued under this
32 article. Rates, fees or charges shall be established, revised and
33 maintained by ordinance and become payable as the governing
34 body may determine by ordinance, and such rates, fees or
35 charges shall be changed from time to time as needful, consis-
36 tent with the provisions of this article.

37 (b) Whenever any rates, fees or charges for services or
38 facilities furnished remain unpaid for a period of thirty days
39 after the same become due and payable, the user of the services
40 and facilities provided shall be delinquent and the user shall be
41 held liable at law until such time as all rates, fees and charges
42 are fully paid.

43 (c) All rates, fees or charges for water service, sewer ser-
44 vice, and, if applicable, stormwater service, whenever delin-
45 quent, as provided by ordinance of the municipality, shall be
46 liens of equal dignity, rank and priority with the lien on such
47 premises of state, county, school and municipal taxes for the
48 amount thereof upon the real property served, and the munici-
49 pality shall have plenary power and authority from time to time
50 to enforce such lien in a civil action to recover the money due
51 for services rendered plus court fees and costs and a reasonable
52 attorney's fee: *Provided*, That an owner of real property may
53 not be held liable for the delinquent rates, fees or charges for
54 services or facilities of a tenant, nor shall any lien attach to real
55 property for the reason of delinquent rates, fees or charges for
56 services or facilities of a tenant of the real property, unless the
57 owner has contracted directly with the municipality to purchase
58 such services or facilities.

59 (d) Municipalities are hereby granted a deferral of filing
60 fees or other fees and costs incidental to the bringing and main-
61 tenance of an action in magistrate court for the collection of the
62 delinquent rates and charges. If the municipality collects the

63 delinquent account, plus fees and costs, from its customer or
64 other responsible party, the municipality shall pay to the magis-
65 trate court the filing fees or other fees and costs which were
66 previously deferred.

67 (e) No municipality may foreclose upon the premises
68 served by it for delinquent rates, fees or charges for which a lien
69 is authorized by this section except through the bringing and
70 maintenance of a civil action for the purpose brought in the
71 circuit court of the county wherein the municipality lies. In
72 every such action, the court shall be required to make a finding
73 based upon the evidence and facts presented that the municipal-
74 ity had exhausted all other remedies for the collection of debts
75 with respect to such delinquencies prior to the bringing of the
76 action. In no event shall foreclosure procedures be instituted by
77 any municipality or on its behalf unless the delinquency had
78 been in existence or continued for a period of two years from
79 the date of the first delinquency for which foreclosure is being
80 sought.

**§8-20-11. Discontinuance of water service for nonpayment of rates
or charges.**

1 Any municipality shall also have plenary power and author-
2 ity, and may covenant with the holders of any bonds issued
3 hereunder, to shut off and discontinue the supplying of the wa-
4 ter service of the combined system for the nonpayment of the
5 rates, fees or charges for said water service or sewer service, or
6 both, or, if applicable, stormwater service, or any combination
7 thereof, or all of them.

§8-20-11a. Governmental entities subject to established rates.

1 The municipality and any county government, state govern-
2 ment and federal government served by the services of the com-
3 bined system shall be subject to the same rates, fees or charges
4 established in this article or to rates, fees or charges established

5 in harmony therewith, for service rendered to the governmental
6 entity, and shall pay such rates, fees or charges when due from
7 corporate funds and the same shall be considered to be part of
8 the revenue of the combined system as defined in this article,
9 and be applied as provided in this article, for the application of
10 such revenues. However, no rates, fees or charges for combined
11 services or stormwater services may be assessed against high-
12 ways, road and drainage easements, and/or stormwater facilities
13 constructed, owned and/or operated by the West Virginia divi-
14 sion of highways.

§8-20-12. Use of revenues; sinking fund.

1 All revenues derived from the operation of any combined
2 system under the provisions of this article shall be set aside as
3 collected and used only for the purpose of paying the cost of
4 repairing, maintaining and operating such system, providing an
5 adequate reserve fund, an adequate depreciation fund, and pay-
6 ing the principal of and interest upon the revenue bonds issued
7 by the municipality under the provisions of this article. The
8 ordinance pursuant to which any bonds are issued shall pledge
9 the revenues derived from the combined system to the purposes
10 aforesaid and shall definitely fix and determine the amount of
11 revenues which shall be necessary and set apart in a special
12 fund for the bond requirements. The amounts so set apart into
13 said special fund for the bond requirements shall be remitted to
14 the West Virginia municipal bond commission to be retained
15 and paid out by said commission consistent with the provisions
16 of this article and the ordinance pursuant to which the bonds
17 have been issued: *Provided*, That payments of principal of and
18 interest on any bonds owned by the United States of America or
19 any agency or department thereof may be made by the munici-
20 pality directly to the United States of America or said agency or
21 department thereof.

§8-20-13. System of accounts; audit.

1 Any municipality operating a combined system under the
2 provisions of this article shall set up and maintain a proper
3 system of accounts in accordance with the requirements of the
4 public service commission, showing the amount of revenues
5 received from the combined system and the application of the
6 same. At least once each year the municipality shall cause the
7 accounts to be properly audited, and a report of the audit shall
8 be open to the public for inspection at all reasonable times.

**§8-20-15. Protection and enforcement of rights of bondholders,
etc.; receivership.**

1 Any holder of any bonds issued under the provisions of this
2 article or of any coupons representing interest accrued thereon
3 may by civil action, mandamus or other proper proceeding
4 enforce the statutory mortgage lien created and granted in sec-
5 tion seven of this article, protect and enforce any and all rights
6 granted hereunder or under any such ordinance or trust inden-
7 ture, and may enforce and compel performance of all duties
8 required by the provisions of this article or by any ordinance or
9 trust indenture to be performed by the municipality or by the
10 governing body or any officer, including the making and col-
11 lecting of reasonable and sufficient rates, fees or charges for
12 services rendered by the combined system.

13 If there be default in the payment of the principal of or
14 interest upon any of bonds, or of both principal and interest, any
15 court having jurisdiction shall appoint a receiver to administer
16 said combined system on behalf of the municipality, and the
17 bondholders or trustee, or both, with power to charge and col-
18 lect rates, fees or charges sufficient to provide for the retirement
19 of the bonds and pay the interest thereon, and for the payment
20 of the repair, maintenance and operation expenses, and the
21 receiver shall apply the revenues in conformity with the provi-
22 sions of this article and the ordinance pursuant to which the
23 bonds have been issued or trust indenture, or both.

§8-20-16. Grants, loans and advances.

1 Any municipality is hereby empowered and authorized to
2 accept loans or grants and procure loans or temporary advances
3 evidenced by notes or other negotiable instruments issued in the
4 manner, and subject to the privileges and limitations, set forth
5 with respect to bonds authorized to be issued under the provi-
6 sions of this article, for the purpose of paying part or all of the
7 cost of acquisition, construction, establishment, extension or
8 equipment of combined systems and the construction of addi-
9 tions, betterments and improvements thereto, and for the other
10 purposes herein authorized, from any authorized agency of the
11 state or from the United States of America or any federal or
12 public agency or department of the United States or any private
13 agency, corporation or individual, which loans or temporary
14 advances, including the interest thereon, may be repaid out of
15 the proceeds of bonds authorized to be issued under the provi-
16 sions of this article, the revenues of the said combined system
17 or grants to the municipality from any agency of the state or
18 from the United States of America or any federal or public
19 agency or department of the United States or any private
20 agency, corporation or individual or from any combination of
21 such sources of payment, and to enter into the necessary con-
22 tracts and agreements to carry out the purposes hereof with any
23 agency of the state, the United States of America or any federal
24 or public agency or department of the United States, or with any
25 private agency, corporation or individual. Any other provisions
26 of this article notwithstanding, interest on any loans or tempo-
27 rary advances may be paid from the proceeds thereof until the
28 maturity of the notes or other negotiable instrument.

29 In no event shall any loan or temporary advance be a gen-
30 eral obligation of the municipality and the loans or temporary
31 advances, including the interest thereon, shall be paid solely
32 from the sources specified in this section.

§8-20-17. Additional and alternative method for constructing, etc., and financing combined system; cumulative authority.

1 This article is, without reference to any other statute or
2 charter provision, full authority for the acquisition, construction,
3 establishment, extension, equipment, additions, betterment,
4 improvement, repair, maintenance and operation of or to the
5 combined system herein provided for and for the issuance and
6 sale of the bonds by this article authorized, and is an additional
7 and alternative method therefor and for the financing thereof,
8 and no petition, referendum or election or other or further pro-
9 ceeding with respect to any undertaking or to the issuance or
10 sale of bonds under this article and no publication of any resolu-
11 tion, ordinance, notice or proceeding relating to any undertak-
12 ing or to the issuance or sale of such bonds is required, except
13 as prescribed by this article, any provisions of other statutes of
14 the state to the contrary notwithstanding: *Provided*, That all
15 functions, powers and duties of the bureau of public health and
16 the division of environmental protection remain unaffected by
17 this article: *Provided, however*, That no municipality may ac-
18 quire, construct, establish, extend, repair or equip or thereafter
19 repair, maintain and operate a combined waterworks, sewerage
20 or stormwater system which includes highways, road and drain-
21 age easements, and/or stormwater facilities constructed, owned
22 and/or operated by the West Virginia division of highways
23 without the express agreement of the commissioner of high-
24 ways.

25 This article is cumulative authority for any undertaking
26 herein authorized, and does not repeal any existing laws with
27 respect thereto.

§8-20-18. Alternative procedure for acquisition, construction, etc., of combined system.

1 (a) As an alternative to the procedure provided in this arti-
2 cle, any municipality is hereby empowered and authorized to
3 acquire, construct, establish, extend, equip, repair, maintain and
4 operate a combined system or to construct, maintain and operate
5 additions, betterments and improvements thereto, whether ac-
6 quired, constructed, established, extended or equipped under the
7 provisions of this article or not, and to collect the revenues
8 therefrom for the services rendered thereby, through the super-
9 vision and control of a committee, by whatever name called,
10 composed of all or of a portion of the governing body, or of a
11 board or commission appointed by the governing body, as may
12 be provided by the governing body, and if such alternative is
13 followed, said committee, board or commission shall have and
14 be limited to all the powers, authority and duties granted to and
15 imposed upon a board as provided in article sixteen of this
16 chapter.

17 However, no municipality may acquire, construct, establish,
18 extend, repair or equip or thereafter repair, maintain and operate
19 a combined waterworks, sewerage or stormwater system, which
20 includes highways, road and drainage easements, and/or storm-
21 water facilities constructed, owned and/or operated by the West
22 Virginia division of highways without the express agreement of
23 the commissioner of highways.

24 (b) In the event that the waterworks or sewerage system or
25 both, or if applicable, stormwater services, are in existence prior
26 to the creation of the combined system, and the waterworks or
27 sewerage system or both, and if applicable, stormwater services,
28 are supervised and controlled by a committee, board or commis-
29 sion, and the alternative provided for in subsection (a) of this
30 section is to be followed with respect to the supervision and
31 control of the combined system, the governing body may by
32 ordinance, after the creation of the combined system, provide:

33 (1) The manner of and procedure for transferring supervi-
34 sion and control from each separate committee, board or com-

35 mission to the committee, board or commission which is super-
36 vising and controlling the combined system; or

37 (2) The manner of and procedure for combining each sepa-
38 rate committee, board or commission into one committee, board
39 or commission and transferring thereto supervision and control
40 as aforesaid.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 13. SEWAGE WORKS AND STORMWATER WORKS.

- §16-13-1. Acquisition, operation, etc., of works; acquisition of property; issuance of bonds.
- §16-13-2. Sanitary board to supervise and control construction, etc., of works; appointment of board; definitions.
- §16-13-3. Powers of sanitary board; contracts; employees; compensation thereof; extensions and improvements; replacement of damaged public works.
- §16-13-9. Contracts and obligations incurred to be paid for solely by revenue bonds.
- §16-13-16. Rates for service; change or readjustment; hearing; lien and recovery; discontinuance of services.
- §16-13-17. Government units subject to established rates.
- §16-13-18. Supervision of works by sanitary board; organization of board; qualifications, terms and compensation of members.
- §16-13-19. Contract with other municipalities for service of works; powers of lessee as to rates; intercepting sewers.
- §16-13-22. Powers conferred in addition to existing powers; jurisdiction outside corporate limits.
- §16-13-22f. Exemption of bonds from taxation.
- §16-13-22g. Covenants with bondholders
- §16-13-23a. Additional powers of municipality upon receipt of order to cease pollution.

§16-13-1. Acquisition, operation, etc., of works; acquisition of property; issuance of bonds.

1 (a) Any municipal corporation and/or sanitary district in the
2 state of West Virginia is hereby authorized and empowered to
3 own, acquire, construct, equip, operate and maintain within

4 and/or without the corporate limits of such municipal corpora-
5 tion:

6 (1) A sewage collection system and/or a sewage treatment
7 plant or plants, intercepting sewers, outfall sewers, force mains,
8 pumping stations, ejector stations, and all other appurtenances
9 necessary or useful and convenient for the collection and/or
10 treatment, purification and disposal, in a sanitary manner, of the
11 liquid and solid waste, sewage, night soil and industrial waste of
12 such municipal corporation and/or sanitary district, including
13 acquisition of the municipal sewerage system resulting from the
14 severance of a combined system pursuant to section one-b,
15 article twenty, chapter eight of this code; and

16 (2) A stormwater collection system and control system,
17 including all lines, pumping stations and all other facilities and
18 appurtenances necessary or useful and convenient for the col-
19 lection and control of stormwater, and an associated stormwater
20 management program.

21 (b) Any municipal corporation and/or sanitary district in the
22 state of West Virginia is hereby authorized and empowered to
23 acquire by gift, grant, purchase, condemnation, or otherwise, all
24 necessary lands, rights-of-way and property therefor, within
25 and/or without the corporate limits of such municipal corpora-
26 tion and/or sanitary district, and to issue revenue bonds to pay
27 the cost of such works and property.

28 (c) Any municipality may serve and supply the facilities of
29 such sewerage system and a stormwater system and associated
30 stormwater management program within the corporate limits of
31 the municipality and within the area extending twenty miles
32 beyond the corporate limits of such municipality: *Provided,*
33 That the municipality may not serve or supply the facilities of
34 such sewerage system or stormwater system within the corpo-
35 rate limits of any other municipality without the consent of the
36 governing body thereof: *Provided, however,* That for storm-

37 water systems, within the twenty miles beyond the municipal-
38 ity's corporate limits the only areas the municipality may serve
39 and supply shall be those areas from which stormwater affects
40 or drains into the municipality.

41 (d) No obligations shall be incurred by any municipality
42 and/or sanitary district in construction or acquisition except
43 such as is payable solely from the funds provided under the
44 authority of this article.

45 (e) No municipal corporation or sanitary district may ac-
46 quire, construct, establish, extend, repair or equip or thereafter
47 repair, maintain and operate a combined waterworks, sewerage
48 or stormwater system, which includes highways, road and
49 drainage easements, and/or stormwater facilities constructed,
50 owned and/or operated by the West Virginia division of high-
51 ways without the express agreement of the commissioner of
52 highways.

**§16-13-2. Sanitary board to supervise and control construction,
etc., of works; appointment of board; definitions.**

1 (a) The construction, acquisition, improvement, equipment,
2 custody, operation and maintenance of any works for the collec-
3 tion, treatment or disposal of sewage and, in addition, for the
4 collection and control of stormwater and the collection of reve-
5 nues therefrom for the service rendered thereby, shall be under
6 the supervision and control of a sanitary board appointed by the
7 governing body as set forth in section eighteen of this article.

8 (b) As used in this article, the following terms shall have
9 the following meanings unless the text clearly indicates other-
10 wise.

11 (1) "Board" means the sanitary board as set up in section
12 eighteen of this article.

13 (2) “Governing body” means the mayor and council or
14 other legally constituted governing body of any municipality.

15 (3) “Municipality” means any municipal corporation, in-
16 corporated city, town, village or sanitary district in the state of
17 West Virginia.

18 (4) “Sewage works” means a works for the collection
19 and/or treatment, purification and disposal of sewage, in its
20 entirety or any integral part thereof.

21 (5) “Stormwater system” or “stormwater works” means a
22 stormwater system in its entirety or any integral part thereof
23 used to collect and dispose of stormwater and an associated
24 stormwater management program. It includes all facilities,
25 structures and natural water courses used for collecting and
26 conducting stormwater to, through and from drainage areas to
27 the points of final outlet, including, but not limited to, any and
28 all of the following: Inlets, conduits, corals, outlets, channels,
29 ponds, drainage easements, water quality facilities, catch basins,
30 ditches, streams, gulches, flumes, culverts, syphons, retention or
31 detention basins, dams, floodwalls, levies, pipes, flood control
32 systems and pumping stations, and associated stormwater man-
33 agement program. The term “stormwater system” and “storm-
34 water works” shall not include highways, road and drainage
35 easements, and/or stormwater facilities constructed, owned
36 and/or operated by the West Virginia division of highways.

37 (6) “Stormwater management program” means those activi-
38 ties associated with the management, operation, maintenance
39 and control of stormwater and stormwater works, including, but
40 not limited to, public education, stormwater and surface runoff
41 water quality improvement, mapping, planning, flood control,
42 inspection, enforcement and any other activities required by
43 state and federal law: *Provided*, That, as used in this article,
44 “stormwater management program” shall not include those
45 activities associated with the management, operation, mainte-

46 nance and control of highways, road and drainage easements,
 47 and/or stormwater facilities constructed, owned and/or operated
 48 by the West Virginia division of highways without the express
 49 agreement of the commissioner of highways.

50 (7) "Works" means sewage works and stormwater works
 51 either separately or collectively.

***§16-13-3. Powers of sanitary board; contracts; employees; com-
 pensation thereof; extensions and improvements;
 replacement of damaged public works.**

1 The board shall have power to take all steps and proceed-
 2 ings and to make and enter into all contracts or agreements
 3 necessary or incidental to the performance of its duties and the
 4 execution of its powers under this article: *Provided*, That any
 5 contract relating to the financing of the acquisition or construc-
 6 tion of any works, or any trust indenture as provided for, shall
 7 be approved by the governing body of the municipality before
 8 the same shall be effective.

9 The board may employ engineers, architects, inspectors,
 10 superintendents, managers, collectors, attorneys, and other
 11 employees as in its judgment may be necessary in the execution
 12 of its powers and duties, and may fix their compensation, all of
 13 whom shall do the work as the board shall direct. All compensa-
 14 tion and all expenses incurred in carrying out the provisions of
 15 this article shall be paid solely from funds provided under the
 16 authority of this article, and the board shall not exercise or carry
 17 out any authority or power herein given it so as to bind said
 18 board of said municipality beyond the extent to which money
 19 shall have been or may be provided under the authority of this
 20 article.

21 No contract or agreement with any contractor or contractors
 22 for labor and/or material, exceeding in amount the sum of ten
 23 thousand dollars, shall be made without advertising for bids,

***Clerk's Note:** This section was also amended by H. B. 2271 (Chapter 143), which passed prior to this act.

24 which bids shall be publicly opened and award made to the best
25 bidder, with power in the board to reject any or all bids.

26 After the construction, installation, and completion of the
27 works, or the acquisition thereof, the board shall operate, man-
28 age and control the same and may order and complete any ex-
29 tensions, betterments and improvements of and to the works
30 that the board may consider expedient, if funds therefor be
31 available or are made available as provided in this article, and
32 shall establish rules and regulations for the use and operation of
33 the works, and of other sewers, stormwater conduits, and drains
34 connected therewith so far as they may affect the operation of
35 such works, and do all things necessary or expedient for the
36 successful operation thereof, including, but not limited to, those
37 activities necessary to comply with all federal and state require-
38 ments, including stormwater and surface runoff water quality
39 improvement activities.

40 The sanitary board may declare an emergency situation in
41 the event of collector line breaks or vital treatment plant equip-
42 ment failure and shall be exempted from competitive bidding
43 requirements and enter into direct purchase agreements or con-
44 tracts for the expenses. All public ways or public works dam-
45 aged or destroyed by the board in carrying out its authority
46 under this article shall be restored or repaired by the board and
47 placed in their original condition, as nearly as practicable, if
48 requested so to do by proper authority, out of the funds pro-
49 vided by this article.

**§16-13-9. Contracts and obligations incurred to be paid for solely
by revenue bonds.**

1 Nothing in this article contained shall be so construed as to
2 authorize or permit any municipality to make any contract or to
3 incur any obligation of any kind or nature except such as shall
4 be payable solely from the funds provided under this article.
5 Funds for the payment of the entire cost of any of the works

6 referred to in this article, exclusive of any portions of the cost
7 that may be defrayed out of any grant or contribution, shall be
8 provided by the issuance of revenue bonds of the municipality,
9 the principal and interest of which shall be payable solely from
10 the fund herein provided for the payment, and the bonds may
11 not, in any respect, be a corporate indebtedness of the municipi-
12 pality, within the meaning of any statutory or constitutional
13 limitations thereon. All the details of the bonds shall be deter-
14 mined by ordinance or ordinances of the municipality.

**§16-13-16. Rates for service; change or readjustment; hearing;
lien and recovery; discontinuance of services.**

1 The governing body shall have power, and it shall be its
2 duty, by ordinance, to establish and maintain just and equitable
3 rates, fees or charges for the use of and the service rendered by:

4 (a) Sewerage works, to be paid by the owner of each and
5 every lot, parcel of real estate or building that is connected with
6 and uses such works by or through any part of the sewerage
7 system of the municipality, or that in any way uses or is served
8 by such works; and

9 (b) Stormwater works, to be paid by the owner of each and
10 every lot, parcel of real estate, or building that in any way uses
11 or is served by such stormwater works or whose property is
12 improved or protected by the stormwater works or any user of
13 such stormwater works.

14 The governing body may change and readjust such rates,
15 fees or charges from time to time. However, no rates, fees or
16 charges for stormwater services may be assessed against high-
17 ways, road and drainage easements, and/or stormwater facilities
18 constructed, owned and/or operated by the West Virginia divi-
19 sion of highways.

20 Such rates, fees or charges shall be sufficient in each year
21 for the payment of the proper and reasonable expense of opera-

22 tion, repair, replacements and maintenance of the works and for
23 the payment of the sums herein required to be paid into the
24 sinking fund. Revenues collected pursuant to this section shall
25 be considered the revenues of the works.

26 No such rates, fees or charges shall be established until
27 after a public hearing, at which all the users of the works and
28 owners of property served or to be served thereby and others
29 interested shall have an opportunity to be heard concerning the
30 proposed rates, fees or charges.

31 After introduction of the ordinance fixing such rates, fees or
32 charges, and before the same is finally enacted, notice of such
33 hearing, setting forth the proposed schedule of such rates, fees
34 or charges, shall be given by publication as a Class II-0 legal
35 advertisement in compliance with the provisions of article three,
36 chapter fifty-nine of this code, and the publication area for such
37 publication shall be the municipality. The first publication shall
38 be made at least ten days before the date fixed in such notice for
39 the hearing.

40 After such hearing, which may be adjourned from time to
41 time, the ordinance establishing rates, fees or charges, either as
42 originally introduced or as modified and amended, shall be
43 passed and put into effect. A copy of the schedule of such rates,
44 fees and charges so established shall be kept on file in the office
45 of the board having charge of the operation of such works, and
46 also in the office of the clerk of the municipality, and shall be
47 open to inspection by all parties interested. The rates, fees or
48 charges so established for any class of users or property served
49 shall be extended to cover any additional premises thereafter
50 served which fall within the same class, without the necessity of
51 any hearing or notice.

52 Any change or readjustment of such rates, fees or charges
53 may be made in the same manner as such rates, fees or charges
54 were originally established as hereinbefore provided: *Provided,*

55 That if such change or readjustment be made substantially pro
56 rata, as to all classes of service, no hearing or notice shall be
57 required. The aggregate of the rates, fees or charges shall al-
58 ways be sufficient for such expense of operation, repair and
59 maintenance and for such sinking fund payments.

60 All rates, fees or charges, if not paid when due, shall consti-
61 tute a lien upon the premises served by such works. If any ser-
62 vice rate, fees or charge so established is not paid within thirty
63 days after the same is due, the amount thereof, together with a
64 penalty of ten percent, and a reasonable attorney's fee, may be
65 recovered by the board in a civil action in the name of the mu-
66 nicipality, and in connection with such action said lien may be
67 foreclosed against such lot, parcel of land or building, in accor-
68 dance with the laws relating thereto: *Provided*, That where both
69 water and sewer services are furnished by any municipality to
70 any premises the schedule of charges may be billed as a single
71 amount or individually itemized and billed for the aggregate
72 thereof.

73 Whenever any rates, rentals, fees or charges for services or
74 facilities furnished shall remain unpaid for a period of thirty
75 days after the same shall become due and payable, the property
76 and the owner thereof, as well as the user of the services and
77 facilities shall be delinquent until such time as all rates, fees and
78 charges are fully paid.

79 The board collecting such rates, fees or charges shall be
80 obligated under reasonable rules and regulations, to shut off and
81 discontinue both water and sewer services to all delinquent
82 users of either water facilities, or sewer facilities, or both, and
83 shall not restore either water facilities or sewer facilities, to any
84 delinquent user of either until all delinquent rates, fees or
85 charges for both water facilities, and sewer facilities, including
86 reasonable interest and penalty charges, have been paid in full.

§16-13-17. Government units subject to established rates.

1 The municipality and any county government, state govern-
2 ment and federal government served by the services of the
3 works shall be subject to the same fees, charges and rates estab-
4 lished as provided in this article, or to fees, charges and rates
5 established in harmony therewith, for service rendered the mu-
6 nicipality, county, state or federal government and shall pay
7 such rates, fees or charges when due from corporate funds and
8 the same shall be considered to be a part of the revenues of the
9 works as herein defined, and be applied as herein provided for
10 the application of the revenues. However, no rates, fees or
11 charges for stormwater services may be assessed against high-
12 ways, road and drainage easements, and/or stormwater facilities
13 constructed, owned and/or operated by the West Virginia divi-
14 sion of highways.

**§16-13-18. Supervision of works by sanitary board; organization
of board; qualifications, terms and compensation
of members.**

1 The governing body shall provide by ordinance the organi-
2 zation of the board, and that the custody, administration, opera-
3 tion and maintenance of such works shall be under the supervi-
4 sion and control of a sanitary board, created as herein provided.

5 Such sanitary board shall be composed of either the mayor
6 of the municipality, or the city manager thereof, if said munici-
7 pality shall have a city manager form of government, and two
8 persons appointed by the governing body: *Provided*, That, in
9 the event of an acquisition or merger of an existing works, the
10 governing body may increase the membership to a maximum of
11 four members in addition to the mayor or city manager of the
12 municipality served by the board.

13 During the construction period, one of the members must
14 be a registered professional engineer. The engineer member of
15 the board need not be a resident of said municipality. After the
16 construction of the plant has been completed, the engineer

17 member may be succeeded by a person not an engineer. No
18 officer or employee of the municipality, whether holding a paid
19 or unpaid office, shall be eligible to appointment on said sani-
20 tary board until at least one year after the expiration of the term
21 of his or her public office. The appointees shall originally be
22 appointed for terms of two and three years respectively, and
23 upon the expiration of each term and each succeeding term, an
24 appointment of a successor shall be made in like manner for a
25 term of three years. Vacancies shall be filled for an unexpired
26 term in the same manner as the original appointment. Each
27 member shall give such bond, if any, as may be required by
28 ordinance. The mayor or city manager shall act as chairman of
29 the sanitary board, which shall elect a vice chairman from its
30 members and shall designate a secretary and treasurer (but the
31 secretary and the treasurer may be one and the same), who need
32 not be a member or members of the sanitary board. The vice
33 chairman, secretary and treasurer shall hold office as such at the
34 will of the sanitary board.

35 The members of the sanitary board shall receive compensa-
36 tion for their services, either as a salary or as payments for
37 meetings attended, as the governing body may determine, and
38 shall be entitled to payment for their reasonable expenses in-
39 curred in the performance of their duties. The governing body
40 shall fix the reasonable compensation of the secretary and trea-
41 surer in its discretion, and shall fix the amounts of bond to be
42 given by the treasurer. All compensation, together with the
43 expenses in this section referred to, shall be paid solely from
44 funds provided under the authority of this article. The sanitary
45 board shall have power to establish bylaws, rules and regula-
46 tions for its own government.

**§16-13-19. Contract with other municipalities for service of
works; powers of lessee as to rates; intercepting
sewers.**

1 Any municipality operating a sewage collecting system
2 and/or a sewage disposal plant or plants or stormwater works as
3 defined in this article, or which as herein provided has ordered
4 the construction or acquisition of such works (in this section
5 called the owner), is hereby authorized to contract with one or
6 more other municipal corporations or political subdivisions
7 within the state (in this section called the lessee), and such les-
8 sees are hereby authorized to enter into contracts with the own-
9 ers, for the service of such works to such lessees and their in-
10 habitants, but only to the extent of the capacity of the works
11 without impairing the usefulness thereof to the owners, upon
12 such terms and conditions as may be fixed by the boards and
13 approved by ordinances of the respective contracting parties:
14 *Provided*, That no contract shall be made for a period of more
15 than forty years or in violation of the provisions of said ordi-
16 nance authorizing bonds hereunder or in violation of the provi-
17 sions of said trust indenture.

18 The lessee shall by ordinance have power to establish,
19 change and adjust rates, fees and charges for the service ren-
20 dered therein by the works against the owners of the premises
21 served, in the manner hereinbefore provided for establishing,
22 changing and adjusting rates, fees and charges for the service
23 rendered in the municipality where the works are owned and
24 operated, and such rates, fees or charges shall be collectible and
25 shall be a lien as herein provided for rates, fees and charges
26 made by the owner.

27 The necessary intercepting sewers and appurtenant works
28 for connecting the works of the owner with the sewerage system
29 of the lessee shall be constructed by the owner and/or the lessee
30 upon such terms and conditions as may be set forth in said con-
31 tract, and the cost or that part of the cost thereof which is to be
32 borne by the owner may be paid as a part of the cost of the
33 works from the proceeds of bonds issued under this article un-
34 less otherwise provided by said ordinance or trust indenture
35 prior to the issuance of the bonds. The income received by the

36 owner under any contract shall, if so provided in said ordinance
37 or trust indenture, be considered to be a part of the revenues of
38 the works as in this article defined and be applied as herein
39 provided for the application of the revenues.

§16-13-22. Powers conferred in addition to existing powers; jurisdiction outside corporate limits.

1 The authority herein given shall be in addition to and not in
2 derogation of any power existing in any municipality under any
3 statutory or charter provisions which it may now have or hereaf-
4 ter adopt. For all purposes of this article, all municipal corpora-
5 tions shall have jurisdiction for twenty miles outside the corpo-
6 rate limits thereof: *Provided*, That for stormwater systems,
7 within the twenty miles beyond the municipality's corporate
8 limits the only areas the municipality may serve and supply
9 shall be those areas from which stormwater affects or drains
10 into the municipality.

11 The jurisdiction and authority provided by this section does
12 not extend to highways, road and drainage easements, and/or
13 stormwater facilities constructed, owned and/or operated by the
14 West Virginia division of highways.

§16-13-22f. Exemption of bonds from taxation.

1 Said bonds and the interest thereon, together with all prop-
2 erties and facilities of said municipality owned or used in con-
3 nection with the works, and all the moneys, revenues and other
4 income of such municipality derived from such works shall be
5 exempt from all taxation by the state of West Virginia or any
6 county, municipality, political subdivision or agency thereof.

§16-13-22g. Covenants with bondholders.

1 Any resolution authorizing the issuance of bonds hereun-
2 der, or any trust indenture with any bank or trust company

3 within or without the state, for the security of the bonds, may
4 contain covenants with the holders of such bonds as to:

5 (a) The purpose or purposes to which the proceeds of sale
6 of such bonds, or the revenues derived from the sewerage sys-
7 tem or stormwater system, may be applied and the securing, use
8 and disposition thereof, including, if considered desirable, the
9 appointment of a trustee or depositary for any of such funds;

10 (b) The pledging of all or any part of the revenues derived
11 from the ownership, operation or control of such sewerage
12 systems or stormwater system, including any part thereof here-
13 tofore or hereafter constructed or acquired or derived from any
14 other sources, to the payment of the principal of or interest
15 thereon of bonds issued hereunder and for such reserve or other
16 funds as may be considered necessary or desirable;

17 (c) The fixing, establishing and collecting of such fees,
18 rentals or other charges for the use of the services and facilities
19 of such sewerage system or stormwater system, including the
20 parts thereof heretofore or hereafter constructed or acquired and
21 the revision of same from time to time, as will always provide
22 revenues at least sufficient to provide for all expenses of opera-
23 tion, maintenance and repair of such sewerage system or storm-
24 water system, the payment of the principal of and interest on all
25 bonds or other obligations payable from the revenues of such
26 sewerage system or stormwater system, and all reserve and
27 other funds required by the terms of the ordinance authorizing
28 the issuance of such bonds;

29 (d) The transfer from the general funds of the municipality
30 to the account or accounts of such sewerage system or storm-
31 water system of an amount equal to the cost of furnishing the
32 municipality or any of its departments, boards or agencies with
33 the services and facilities of such sewerage system or storm-
34 water system;

35 (e) Limitations or restrictions upon the issuance of addi-
36 tional bonds or other obligations payable from the revenue of
37 such sewerage system or stormwater system, and the rank or
38 priority, as to lien and source and security for payment from the
39 revenues of the sewerage system or stormwater system, be-
40 tween bonds payable from the revenues;

41 (f) The manner and terms upon which all bonds and other
42 obligations issued hereunder may be declared immediately due
43 and payable upon the happening of a default in the payment of
44 the principal of or interest thereon, or in the performance of any
45 covenant or agreement with bondholders, and the manner and
46 terms upon which defaults may be declared cured and the accel-
47 eration of the maturity of such bonds rescinded and repealed;

48 (g) Budgets for the annual operation, maintenance and
49 repair of such sewerage system or stormwater system and re-
50 strictions and limitations upon expenditures for such purposes,
51 and the manner of adoption, modification, repeal or amendment
52 thereof, including the approval of such budgets by consulting
53 engineers designated by holders of bonds issued hereunder;

54 (h) The amounts of insurance to be maintained upon such
55 sewerage system or stormwater system, or any part thereof, and
56 the use and disposition of the proceeds of any insurance;

57 (i) The keeping of books of account, relating to such under-
58 takings and the audit and inspection thereof, and the furnishing
59 to the holders of bonds issued hereunder or their representa-
60 tives, reports prepared, certified, or approved by accountants
61 designated or approved by the holders of bonds issued hereun-
62 der;

63 (j) Such other additional covenants as shall be considered
64 necessary or desirable for the security of the holders of bonds
65 issued hereunder, notwithstanding that other covenants are not
66 expressly enumerated hereunder, it being the intention hereof to

67 grant to the municipalities the power to make any and all cove-
68 nants or agreements necessary in order to secure greater market-
69 ability for bonds issued hereunder as fully and to the same ex-
70 tent as such covenants or agreements could be made by a pri-
71 vate corporation rendering similar services and facilities and to
72 grant such municipalities full and complete power to enter into
73 any contracts, covenants or agreements with holder of bonds
74 issued hereunder not inconsistent with the constitution of the
75 state of West Virginia.

**§16-13-23a. Additional powers of municipality upon receipt of
order to cease pollution.**

1 Notwithstanding any other provision contained in this arti-
2 cle, and in addition thereto, the governing body of any municipi-
3 pal corporation which has received or which hereafter receives
4 an order issued by the director of the division of environmental
5 protection or the environmental quality board requiring such
6 municipal corporation to cease the pollution of any stream or
7 waters, is hereby authorized and empowered to fix, establish
8 and maintain, by ordinance, just and equitable rates, fees or
9 charges for the use of the services and facilities of the existing
10 sewer system and/or stormwater system of such municipal cor-
11 poration, and/or for the use of the services and facilities to be
12 rendered upon completion of any works and system necessary
13 by virtue of said order, to be paid by the owner, tenant or occu-
14 pant of each and every lot or parcel of real estate or building
15 that is connected with and uses any part of such sewer system or
16 stormwater system, or that in any way uses or is served thereby,
17 and may change and readjust such rates, fees or charges from
18 time to time.

19 Such rates, fees or charges shall be sufficient for the pay-
20 ment of all the proper and reasonable costs and expenses of the
21 acquisition and construction of plants, machinery and works for
22 the collection and/or treatment, purification and disposal of
23 sewage or stormwater, and the repair, alteration and extension

24 of existing sewer facilities or stormwater facilities, as may be
25 necessary to comply with such order of the director of the divi-
26 sion of environmental protection or the environmental quality
27 board, and for the operation, maintenance and repair of the
28 entire works and system.

29 The governing body shall create, by ordinance, a sinking
30 fund to accumulate and hold any part or all of the proceeds
31 derived from rates or charges until completion of the construc-
32 tion, to be remitted to and administered by the municipal bond
33 commission by expending and paying the costs and expenses of
34 construction and operation in the manner as provided by said
35 ordinance.

36 After the completion of the construction such rates, fees or
37 charges shall be sufficient in each year for the payment of the
38 proper and reasonable costs and expenses of operation, mainte-
39 nance, repair, replacement and extension from time to time, of
40 the entire sewer and works or entire stormwater works.

41 No such rates, fees or charges shall be established until
42 after a public hearing, at which all the potential users of the
43 works and owners of property served or to be served thereby
44 and others shall have had an opportunity to be heard concerning
45 the proposed rates or charges.

46 After introduction of the ordinance fixing rates, fees or
47 charges, and before the same is finally enacted, notice of such
48 hearing, setting forth the proposed schedule of rates, fees or
49 charges, shall be given by publication of notice as a Class II-0
50 legal advertisement in compliance with the provisions of article
51 three, chapter fifty-nine of this code, and the publication area
52 for such publication is the municipality. The first publication
53 shall be made at least ten days before the date fixed therein for
54 the hearing.

55 After such hearing, which may be adjourned from time to
56 time, the ordinance establishing the rates, fees or charges, either
57 as originally introduced or as modified and amended, may be
58 passed and put into effect. A copy of the schedule of the rates,
59 fees and charges so established shall be kept on file in the office
60 of the sanitary board having charge of the construction and
61 operation of such works, and also in the office of the clerk of
62 the municipality, and shall be open to inspection by all parties
63 interested. The rates, fees or charges so established for any class
64 of users or property served shall be extended to cover any addi-
65 tional premises thereafter served which fall within the same
66 class, without the necessity of any hearing or notice.

67 Any change or readjustment of rates, fees or charges may
68 be made in the same manner as rates, fees or charges were orig-
69 inally established as hereinbefore provided: *Provided*, That if
70 such change or readjustment be made substantially pro rata, as
71 to all classes of service, no hearing or notice is required.

72 If any rate, fees or charge so established is not paid within
73 thirty days after the same is due, the amount thereof, together
74 with a penalty of ten percent, and a reasonable attorney's fee,
75 may be recovered by the sanitary board of such municipal cor-
76 poration in a civil action in the name of the municipality.

77 Any municipal corporation exercising the powers given
78 herein has authority to construct, acquire, improve, equip, oper-
79 ate, repair and maintain any plants, machinery, or works neces-
80 sary to comply with the order of the director of the division of
81 environmental protection or the environmental quality board,
82 and the authority provided herein to establish, maintain and
83 collect rates, fees or charges is an additional and alternative
84 method of financing such works and matters, and is independ-
85 ent of any other provision of this article insofar as the article
86 provides for or requires the issuance of revenue bonds or the
87 imposition of rates, fees and charges in connection with the

88 bonds: *Provided*, That except for the method of financing such
89 works and matters, the construction, acquisition, improvement,
90 equipment, custody, operation, repair and maintenance of any
91 plants, machinery or works in compliance with an order of the
92 director of the division of environmental protection or the envi-
93 ronmental quality board, and the rights, powers, and duties of
94 the municipal corporation and the respective officers and de-
95 partments thereof, including the sanitary board, are governed by
96 the provisions of this article: *Provided, however*, That the juris-
97 diction and authority provided by this section does not extend to
98 highways, road and drainage easements, and/or stormwater
99 facilities constructed, owned and/or operated by the West Vir-
100 ginia division of highways and no rates, fees or charges for
101 stormwater services or costs of compliance may be assessed
102 against highways, road and drainage easements, and/or storm-
103 water facilities constructed, owned and/or operated by the West
104 Virginia division of highways.

CHAPTER 213

**(S. B. 407 — By Senators Love, Anderson, Bailey, Boley,
Bowman, Caldwell, Edgell, Facemyer, Hunter, Minard,
Mitchell, Prezioso, Redd, Ross, Rowe, Sprouse,
Minear, Plymale, Helmick and Chafin)**

[Passed April 14, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirty-seven, relating to

authorizing a rainy day fund for municipalities known as a financial stabilization fund; naming act; providing findings of Legislature; authorizing municipalities to create financial stabilization funds; specifying the receipts available for the fund; establishing a cap of thirty percent for the fund; authorizing investment of funds; and specifying authorized expenditures from the fund.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 37. MUNICIPAL FINANCIAL STABILIZATION FUND ACT.

§8-37-1. Short title.

§8-37-2. Findings and declarations.

§8-37-3. Budget stabilization fund; creation; appropriation; maximum.

§8-37-4. Fund investment; usage.

§8-37-1. Short title.

- 1 This act may be known and cited as the “Municipal
- 2 Financial Stabilization Fund Act”.

§8-37-2. Findings and declarations.

- 1 The Legislature finds and declares that:

- 2 (1) Municipalities should maintain a prudent level of
- 3 financial resources to try to protect against reducing service
- 4 levels or raising taxes and fees because of temporary revenue
- 5 shortfalls, unpredicted one-time expenditures or emergency
- 6 situations; and

7 (2) The creation, maintenance and use of a financial
8 stabilization fund will provide municipalities with assistance to
9 meet these challenges, as well as enable them to improve their
10 financial management and practices.

**§8-37-3. Budget stabilization fund; creation; appropriation;
maximum.**

1 (a) A municipality may create a financial stabilization fund
2 by a majority vote of its governing body. The fund may receive
3 appropriations, gifts, grants and any other funds made available.

4 (b) The governing body may appropriate a sum to the fund
5 from any surplus in the general fund at the end of each fiscal
6 year or from any other money available.

7 (c) The amount of money in the fund may not exceed thirty
8 percent of the municipality's most recent general fund budget,
9 as originally adopted. When the fund exceeds the thirty percent,
10 the governing body shall transfer the excess to any fund it
11 considers appropriate.

§8-37-4. Fund investment; usage.

1 (a) The governing body may invest the money in the fund
2 as it considers appropriate, with the earnings retained by the
3 fund.

4 (b) The governing body may appropriate money in the
5 financial stabilization fund upon a majority vote for the
6 following purposes:

7 (1) To cover a general fund shortfall; or

8 (2) Any other purpose the municipality considers appropri-
9 ate.

CHAPTER 214

(H. B. 2130 — By Delegate Williams)

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-e, relating to the assessment of a fifty dollar civil penalty in addition to any fines and costs for crimes involving the division of natural resources' use of decoy animals.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5e. Assessment fee for decoy animals.

1 Any person convicted for the violation of any law involving
2 the division of natural resources' use of a decoy animal shall,
3 in addition to any fines and costs for the criminal violation, pay
4 a fifty dollar civil penalty to the division of natural resources,
5 law-enforcement section. The civil penalty shall be collected by
6 the court in which the person is convicted and forwarded to the
7 division of natural resources, law-enforcement section. All
8 funds collected are to be placed in a special account and used
9 for: (1) The purchase or repair of decoy animals; and (2) the
10 purchase of equipment for use with decoy animals.

CHAPTER 215

(Com. Sub. for S. B. 40 — By Senators
Love, Hunter, Mitchell and Burnette)

[Passed April 12, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-two-a, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to making it illegal to possess, sell or buy bear parts under certain circumstances; and increasing fines and penalties for unlawfully hunting or killing bear.

Be it enacted by the Legislature of West Virginia:

That section twenty-two-a, 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.

§20-2-22a. Hunting, tagging and reporting bear; procedures applicable to property destruction by bear; penalties.

- 1 (a) No person in any county of this state shall hunt, capture,
- 2 or kill any bear, or have in his or her possession any bear or
- 3 bear parts, except during the hunting season for bear and in the
- 4 manner designated by rules promulgated by the division of
- 5 natural resources and as provided for in this section. For the
- 6 purposes of this section, bear parts include, but are not limited
- 7 to, the pelt, gall bladder, skull and claws of bear.

8 (b) A person who kills a bear shall, within twenty-four
9 hours after the killing, deliver the bear or fresh skin to a
10 conservation officer or checking station for tagging. A division
11 of natural resources tag shall be affixed to it before any part of
12 the bear may be transported more than seventy-five miles from
13 the point of kill. The division of natural resources tag shall
14 remain on the skin until it is tanned or mounted. Any bear or
15 bear parts not properly tagged shall be forfeited to the state for
16 disposal to a charitable institution, school or as otherwise
17 designated by the division of natural resources.

18 (c) It is unlawful:

19 (1) To hunt bear without a bear damage stamp as prescribed
20 in section forty-four-b of this article, in addition to a hunting
21 license as prescribed in this article;

22 (2) To hunt a bear with: (A) A shotgun using ammunition
23 loaded with more than one solid ball; (B) a rifle of less than
24 twenty-five caliber using rimfire ammunition; or (C) a cross-
25 bow;

26 (3) To kill or attempt to kill any bear through the use of
27 poison, explosives, snares, steel traps or deadfalls other than as
28 authorized in this section;

29 (4) To shoot at or kill a bear cub weighing less than one
30 hundred pounds or to kill any bear accompanied by a cub;

31 (5) To possess any part of a bear not tagged in accordance
32 with the provisions of this section;

33 (6) To enter a state game refuge with firearms for the
34 purpose of pursuing or killing a bear except under the direct
35 supervision of division personnel;

36 (7) To hunt bear with dogs or to cause dogs to chase bear
37 during seasons other than those designated by the division of
38 natural resources for the hunting of bear;

39 (8) To pursue a bear with a pack of dogs other than the pack
40 used at the beginning of the hunt once the bear is spotted and
41 the chase has begun;

42 (9) To possess, harvest, sell or purchase bear parts obtained
43 from bear killed in violation of this section;

44 (10) To organize for commercial purposes or to profession-
45 ally outfit a bear hunt or to give or receive any consideration
46 whatsoever or any donation in money, goods or services in
47 connection with a bear hunt notwithstanding the provisions of
48 sections twenty-three and twenty-four of this article; or

49 (11) For any person who is not a resident of this state to
50 hunt bear with dogs or to use dogs in any fashion for the
51 purpose of hunting bear in this state except in legally authorized
52 hunts.

53 (d) The following provisions apply to bear destroying
54 property:

55 (1)(A) Any property owner or lessee who has suffered
56 damage to real or personal property, including loss occasioned
57 by the death or injury of livestock or the unborn issue of
58 livestock, caused by an act of a bear may complain to any
59 conservation officer of the division of natural resources for
60 protection against the bear.

61 (B) Upon receipt of the complaint, the officer shall immedi-
62 ately investigate the circumstances of the complaint. If the
63 officer is unable to personally investigate the complaint, he or
64 she shall designate a wildlife biologist to investigate on his or
65 her behalf.

66 (C) If the complaint is found to be justified, the officer or
67 designated person may, together with the owner and other
68 residents, proceed to hunt, destroy or capture the bear that
69 caused the property damage: *Provided*, That only the conserva-
70 tion officer or the wildlife biologist shall determine whether to
71 destroy or capture the bear and whether to use dogs to capture
72 or destroy the bear: *Provided, however*, That, in the event out-
73 of-state dogs are used in the hunt, the owners of the dogs are the
74 only nonresidents permitted to participate in hunting the bear.

75 (2)(A) When a property owner has suffered damage to real
76 or personal property as the result of an act by a bear, the owner
77 shall file a report with the director of the division of natural
78 resources. The report shall state whether or not the bear was
79 hunted and destroyed and, if so, the sex, weight and estimated
80 age of the bear. The report shall also include an appraisal of the
81 property damage occasioned by the bear duly signed by three
82 competent appraisers fixing the value of the property lost.

83 (B) The report shall be ruled upon and the alleged damages
84 examined by a commission comprised of the complaining
85 property owner, an officer of the division and a person to be
86 jointly selected by the officer and the complaining property
87 owner.

88 (C) The division shall establish the procedures to be
89 followed in presenting and deciding claims under this section
90 in accordance with article three, chapter twenty-nine-a of this
91 code.

92 (D) All claims shall be paid in the first instance from the
93 bear damage fund provided for in section forty-four-b of this
94 article. In the event the fund is insufficient to pay all claims
95 determined by the commission to be just and proper, the
96 remainder due to owners of lost or destroyed property shall be

97 paid from the special revenue account of the division of natural
98 resources.

99 (3) In all cases where the act of the bear complained of by
100 the property owner is the killing of livestock, the value to be
101 established is the fair market value of the livestock at the date
102 of death. In cases where the livestock killed is pregnant, the
103 total value shall be the sum of the values of the mother and the
104 unborn issue, with the value of the unborn issue to be deter-
105 mined on the basis of the fair market value of the issue had it
106 been born. In no event shall the fair market value of the
107 livestock exceed twice the assessed value of the livestock for
108 personal property taxes.

109 (e) *Criminal penalties.* — (1) Any person who commits a
110 violation of the provisions of this section is guilty of a misde-
111 meanor and, upon conviction thereof, shall be fined not less
112 than one thousand dollars nor more than five thousand dollars,
113 which fine is not subject to suspension by the court, imprisoned
114 in a county or regional jail not less than thirty nor more than
115 one hundred days, or both fined and imprisoned. Further, the
116 person's hunting and fishing licenses shall be suspended for
117 two years.

118 (2) Any person who commits a second violation of the
119 provisions of this section is guilty of a misdemeanor and, upon
120 conviction thereof, shall be fined not less than two thousand
121 dollars nor more than seven thousand five hundred dollars,
122 which fine is not subject to suspension by the court, imprisoned
123 in a county or regional jail not less than thirty days nor more
124 than one year, or both fined and imprisoned. The person's
125 hunting and fishing licenses shall be suspended for life.

130 (3) Any person who commits a third or subsequent viola-
131 tion of the provisions of this section is guilty of a felony and,
132 upon conviction thereof, shall be fined not less than five

133 thousand dollars nor more than ten thousand dollars, which fine
134 is not subject to suspension by the court, imprisoned in a
135 correctional facility not less than one year nor more than five
136 years, or both fined and imprisoned.

CHAPTER 216

(H. B. 2947 — By Delegates Yeager, Ashley,
Williams, Stemple and Marshall)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section forty-a, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section forty-three of said article, all relating to the elimination of the Class AB combination resident hunting, trapping and fishing license and the Class G nonresident family fishing license.

Be it enacted by the Legislature of West Virginia:

That section forty-a, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that section forty-three of said article be amended and reenacted, all to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-43. Class E, Class EE, Class F and Class H licenses for nonresidents.

1 On or after the first day of January, one thousand nine
2 hundred ninety-eight, the licenses in this section shall be

3 required of nonresidents to hunt and fish in West Virginia. A
4 Class E license shall be a nonresident hunting license and shall
5 entitle the licensee to hunt all legal species of wild animals and
6 wild birds in all counties of the state, except when other
7 licenses or permits are required. It shall be issued only to
8 citizens of the United States or Canada and to unnaturalized
9 persons who possess the permit referred to in section twenty-
10 nine of this article who are not residents of this state. The fee
11 therefor shall be one hundred dollars.

12 A Class EE license shall be a nonresident bear hunting
13 license and shall entitle the licensee to hunt bear in all counties
14 of the state, except when additional licenses or permits are
15 required. It shall be issued only to citizens of the United States
16 or Canada and to unnaturalized persons who possess the permit
17 referred to in section twenty-nine of this article who are not
18 residents of this state. The fee therefor shall be one hundred
19 fifty dollars.

20 A Class F license shall be a nonresident fishing license and
21 shall entitle the licensee to fish for all fish in all counties of the
22 state except when additional licenses or permits are required. It
23 shall be issued only to citizens of the United States or Canada
24 and to unnaturalized persons who possess the permit referred to
25 in section twenty-nine of this article who are not residents of
26 this state. The fee therefor shall be thirty dollars.

27 Trout fishing is not permitted with a Class F license unless
28 such license has affixed thereto an appropriate trout stamp as
29 prescribed by the division of natural resources.

30 A Class H license shall be a nonresident small game
31 hunting license and shall entitle the licensee to hunt small game
32 in all counties of the state, except when additional licenses or
33 permits are required, for a period of six days beginning with the
34 date it is issued. It shall be issued only to citizens of the United

35 States or Canada who are not residents of this state. The fee
36 therefor shall be twenty dollars. As used in this section, “small
37 game” means all game except bear, deer, wild turkey and wild
38 boar.

CHAPTER 217

(H. B. 2946 — By Delegates Yeager, Williams and Stemple)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-six-d, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring a person hunting boar with a Class P license to additionally have a valid Class A, Class AB, Class X, Class A-L or Class AB-L license.

Be it enacted by the Legislature of West Virginia:

That section forty-six-d, 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.

§20-2-46d. Class P special resident boar hunting license; fee; authority of director to propose rules limiting the number of licenses issued.

1 A Class P license is a special resident boar hunting license
2 for wild boar of either sex and entitles the licensee to hunt and
3 kill boar during the Class P license season. A Class P license
4 may be issued only to residents. Only one Class P license may
5 be acquired during any calendar year in which a wild boar

6 season is held and a Class P license may be used only by the
7 applicant to whom such license is issued. The fee for a Class P
8 license is five dollars.

9 The director shall promulgate rules governing the issuance
10 of Class P licenses. The director may limit, on an equitable
11 basis, the number of persons who may hunt wild boar in any
12 county or any part of a county. The licenses shall be issued in
13 a form prescribed by the director. A person hunting boar with
14 a Class P license must additionally have a valid Class A, Class
15 AB, Class X, Class A-L or Class AB-L license.

CHAPTER 218

(Com. Sub. for S. B. 708 — By Senators
Helmick, Minear, Ross and Rowe)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article two-b, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to law-enforcement and sports education stamp; and disallowing the use of funds from the sale of the stamp on law-enforcement education programs for boaters.

Be it enacted by the Legislature of West Virginia:

That section ten, article two-b, 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 2B. WILDLIFE ENDOWMENT FUND.

§20-2B-10. Law-enforcement and sports education stamp.

1 (a) Any nonresident hunter, angler or trapper licensed to
2 hunt, fish or trap in this state, in addition to a hunting, fishing
3 or trapping license of Class E, EE, F, G, H or K in the case of
4 a nonresident, shall have a law-enforcement and sports educa-
5 tion stamp which shall be issued by the division of natural
6 resources. The stamp shall be sold at places where hunting,
7 fishing or trapping licenses are sold. The fee for the law-
8 enforcement and sports education stamp is five dollars for a
9 nonresident of West Virginia.

10 (b) The revenue derived from the sale of law-enforcement
11 and sports education stamps shall be deposited in the state
12 treasury and shall be credited to the division of natural re-
13 sources, law-enforcement section. The revenue shall be used
14 and paid out, upon order of the director, for the law-enforce-
15 ment section's expenses relating to the general enforcement of
16 state laws pertaining to the conservation of fish and wildlife and
17 or law-enforcement education programs for hunters, anglers and
18 trappers: *Provided*, That no expenditures of the revenue derived
19 from the sale of the law-enforcement and sports education
20 stamp shall be made for law-enforcement purposes not directly
21 related to the wildlife resources of the state or for the educa-
22 tional programs set forth in this subsection. Any unexpended
23 moneys derived from the sale of law-enforcement and sports
24 education stamps shall be carried forward to the next fiscal year
25 and expended for law-enforcement and educational programs.

CHAPTER 219

(Com. Sub. for H. B. 2904 — By Delegates
Manuel, Pethtel and Faircloth)

[Passed April 12, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections seventeen, seventeen-a and eighteen, article three, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to allocation of interest or other earnings accrued on certain federal moneys received for allocation by the auditor.

Be it enacted by the Legislature of West Virginia:

That sections seventeen, seventeen-a and eighteen, article three, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 3. FOREST AND WILDLIFE AREAS.

§20-3-17. Disposition of proceeds of national forests.

§20-3-17a. Same — Counties embracing Spruce Knob-Seneca Rocks national recreation area.

§20-3-18. Disposition of flood control, navigation and allied funds from the federal government.

§20-3-17. Disposition of proceeds of national forests.

1 Receipts from any national forest, paid to the state or its
2 proper officers pursuant to directions of acts of Congress, are to
3 be allocated by the auditor to each county which has acreage
4 located in such national forest, in the proportion which the
5 acreage in the county bears to the total acreage of the national
6 forest in this state. Interest or other earnings accrued upon
7 investment of the receipts pending allocation thereof shall be
8 allocated to the recipients of the allocations in proportion to
9 each recipient's allocation of the receipts. Eighty percent of the
10 funds so allocated to any county are to be paid to the board of
11 education of the county to be expended by the board for the
12 benefit of the public schools of the county. Twenty percent of
13 the funds so allocated to any county are to be paid to the state

14 road commission to be expended for feeder and state local
15 service road purposes in that county.

16 Notwithstanding any contrary provisions of former law, any
17 sheriff or county court of any county having charge or custody
18 of any unexpended national forest proceeds, received under
19 allocations made pursuant to former provisions of law, shall pay
20 over eighty percent of the unexpended balance to the county
21 board of education, and twenty percent thereof to the state road
22 commission, for expenditure as provided herein.

**§20-3-17a. Same — Counties embracing Spruce Knob-Seneca
Rocks national recreation area.**

1 Notwithstanding the provisions of section seventeen of this
2 article, national forests receipts allocated by the auditor as
3 provided in section seventeen of this article to any county in
4 which is located any part of the Spruce Knob-Seneca Rocks
5 national recreation area as established by Public Law 89-207,
6 89th Congress, are to be paid by the auditor to the county as
7 follows: Sixty-three percent to the board of education of the
8 county to be expended by the board for the benefit of the public
9 schools of the county, and thirty-seven percent to the county
10 commission of the county to be expended by the commission
11 for general county purposes. Interest or other earnings accrued
12 upon investment of the receipts pending allocation thereof shall
13 be allocated to the recipients of the allocations in proportion to
14 each recipient's allocation of the receipts.

**§20-3-18. Disposition of flood control, navigation and allied funds
from the federal government.**

1 Receipts from the treasurer of the United States, paid to the
2 state or its proper officers pursuant to direction of an act of
3 Congress relating to disposition of funds received on account of
4 the leasing of lands for flood control, navigation and allied

5 purposes, are to be allocated by the state auditor to each county
6 in accordance with the method of allocation specified by the
7 federal government. Interest or other earnings accrued upon
8 investment of the receipts pending allocation thereof shall be
9 allocated to the recipients of the allocations in proportion to
10 each recipient's allocation of the receipts. The state auditor
11 shall transfer to the road commission fifty percent of the funds
12 so allocated to each county for the purpose of maintenance of
13 feeder and state local service roads in the area or areas of the
14 county in which the flooded lands are located. Fifty percent of
15 the funds so allocated to any county in which the lands are
16 located are to be paid by the state auditor to the board of
17 education of that county to be expended by the board for the
18 benefit of the public schools of the county.

CHAPTER 220

(S. B. 727 — By Senators Wooton, Snyder and Mitchell)

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-one, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requirements of franchise agreements between brewers and distributors of nonintoxicating beer; and prohibiting brewers from requiring certain financial information of distributors.

Be it enacted by the Legislature of West Virginia:

That section twenty-one, article sixteen, 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 16. NONINTOXICATING BEER.

§11-16-21. Requirements as to franchise agreements between brewers and distributors; transfer of franchise by distributor; notice thereof to brewer; arbitration of disputes as to such transfer; violations and penalties; limitation of section.

1 (a) On and after the first day of July, one thousand nine
2 hundred seventy-one, it shall be unlawful for any brewer to
3 transfer or deliver to a distributor any nonintoxicating beer, ale
4 or other malt beverage or malt cooler without first having
5 entered into an equitable franchise agreement with such
6 distributor, which franchise agreement shall be in writing, shall
7 be identical as to terms and conditions with all other franchise
8 agreements between such brewer and its other distributors in
9 this state and which shall contain a provision in substance or
10 effect as follows:

11 (1) The brewer recognizes that the distributor is free to
12 manage his business in the manner the distributor deems best
13 and that this prerogative vests in the distributor, subject to the
14 provisions of this article, the exclusive right to establish his or
15 her selling prices, to select the brands of beer he or she wishes
16 to handle and to determine the efforts and resources which the
17 distributor will exert to develop and promote the sale of the
18 brewer's products handled by the distributor. However, since
19 the brewer does not expect that its products handled by the
20 distributor will be sold by others in the territory assigned to the
21 distributor, the brewer is dependent upon the distributor alone
22 for the sale of such products in said territory. Consequently, the
23 brewer expects that the distributor will price competitively the
24 products handled by the distributor, devote reasonable effort
25 and resources to the sale of such products and maintain a
26 satisfactory sales level.

27 (2) Whenever the manufacturing, bottling or other produc-
28 tion rights for the sale of nonintoxicating beer at wholesale of
29 any brewer is acquired by another brewer, the franchised
30 distributor of the selling brewer shall be entitled to continue
31 distributing the selling brewer's beer products as authorized in
32 the distributor's existing franchise agreement and the acquiring

33 brewer shall market all the selling brewer's beer products
34 through said franchised distributor as though the acquiring
35 brewer had made the franchise agreement and the acquiring
36 brewer may terminate said franchise agreement only in
37 accordance with subdivision (2), subsection (b) of this section:
38 *Provided*, That the acquiring brewer may distribute any of its
39 other beer products through its duly authorized franchises in
40 accordance with all other provisions of this section.

41 (b) It shall also be unlawful:

42 (1) For any brewer or brewpub or distributor, or any officer,
43 agent or representative of any brewer or brewpub or distributor,
44 to coerce or persuade or attempt to coerce or persuade any
45 person licensed to sell, distribute or job nonintoxicating beer,
46 ale or other malt beverage or malt cooler at wholesale or retail,
47 to enter into any contracts or agreements, whether written or
48 oral, or to take any other action which will violate or tend to
49 violate any provision of this article or any of the rules, regula-
50 tions, standards, requirements or orders of the commissioner
51 promulgated as provided in this section;

52 (2) For any brewer or brewpub or distributor, or any officer,
53 agent or representative of any brewer or brewpub or distributor,
54 to cancel, terminate or rescind without due regard for the
55 equities of such brewer or brewpub or distributor and without
56 just cause, any franchise agreement, whether oral or written,
57 and in the case of an oral franchise agreement, whether the
58 same was entered into on or before the eleventh day of June,
59 one thousand nine hundred seventy-one, and in the case of a
60 franchise agreement in writing, whether the same was entered
61 into on, before or subsequent to the first day of July, one
62 thousand nine hundred seventy-one. The cancellation, termina-
63 tion or rescission of any such franchise agreement shall not
64 become effective for at least ninety days after written notice of
65 such cancellation, termination or rescission has been served on
66 the affected party and the commissioner by certified mail,
67 return receipt requested: *Provided*, That said ninety-day period
68 and said notice of cancellation, termination or rescission shall
69 not apply if such cancellation, termination or rescission is

70 agreed to in writing by both the brewer and the distributor
71 involved; or

72 (3) For any brewer to require a distributor to submit profit
73 and loss statements, balance sheets or financial records as a
74 requirement to retain its franchise.

75 (c) In the event a distributor desires to sell or transfer his or
76 her franchise, such distributor shall give to the brewer or
77 brewpub at least sixty days' notice in writing of such impending
78 sale or transfer and the identity of the person, firm or corpora-
79 tion to whom such sale or transfer is to be made and such other
80 information as the brewer may reasonably request. Such notice
81 shall be made upon forms and contain such additional informa-
82 tion as the commissioner by rule or regulation shall prescribe.
83 A copy of such notice shall be forwarded to the commissioner.
84 The brewer or brewpub shall be given sixty days to approve or
85 disapprove of such sale or transfer. If the brewer or brewpub
86 neither approves nor disapproves thereof within sixty days of
87 the date of receipt of such notice, the sale or transfer of such
88 franchise shall be deemed to be approved by such brewer. In the
89 event the brewer or brewpub shall disapprove of the sale or
90 transfer to the prospective franchisee, transferee or purchaser,
91 such brewer or brewpub shall give notice to the distributor of
92 that fact in writing, setting forth the reason or reasons for such
93 disapproval. The approval shall not be unreasonably withheld
94 by the brewer or brewpub. The fact that the prospective
95 franchisee, transferee or purchaser has not had prior experience
96 in the nonintoxicating beer business or beer business shall not
97 be deemed sufficient reason in and of itself for a valid disap-
98 proval of the proposed sale or transfer, but may be considered
99 in conjunction with other adverse factors in supporting the
100 position of the brewer or brewpub. Nor may the brewer or
101 brewpub impose requirements upon the prospective franchisee,
102 transferee or purchaser which are more stringent or restrictive
103 than those currently demanded of or imposed upon the brewer's
104 or brewpub's or other distributors in the state of West Virginia.
105 A copy of such notice of disapproval shall likewise be for-
106 ward to the commissioner and to the prospective franchisee,
107 transferee or purchaser. In the event the issue be not resolved

108 within twenty days from the date of such disapproval, either the
109 brewer, brewpub, distributor or prospective franchisee, trans-
110 feree or purchaser shall notify the other parties of his or her
111 demand for arbitration and shall likewise notify the commis-
112 sioner thereof. A dispute or disagreement shall thereupon be
113 submitted to arbitration in the county in which the distributor's
114 principal place of business is located by a board of three
115 arbitrators, which request for arbitration shall name one
116 arbitrator. The party receiving such notice shall within ten days
117 thereafter by notice to the party demanding arbitration name the
118 second arbitrator or, failing to do so, the second arbitrator shall
119 be appointed by the chief judge of the circuit court of the
120 county in which the distributor's principal place of business is
121 located on request of the party requesting arbitration in the first
122 instance. The two arbitrators so appointed shall name the third
123 or, failing to do so within ten days after appointment of the
124 second arbitrator, the third arbitrator may be appointed by said
125 chief judge upon request of either party. The arbitrators so
126 appointed shall promptly hear and determine and the questions
127 submitted pursuant to the procedures established by the
128 American arbitration association and shall render their decision
129 with all reasonable speed and dispatch but in no event later than
130 twenty days after the conclusion of evidence. Said decision
131 shall include findings of fact and conclusions of law and shall
132 be based upon the justice and equity of the matter. Each party
133 shall be given notice of such decision. If the decision of the
134 arbitrators be in favor of or in approval of the proposed sale or
135 transfer, the brewer or brewpub shall forthwith agree to the
136 same and shall immediately transfer the franchise to the
137 proposed franchisee, transferee or purchaser unless notice of
138 intent to appeal such decision is given the arbitrators and all
139 other parties within ten days of notification of such decision. If
140 any such party deems himself aggrieved thereby, such party
141 shall have a right to bring an appropriate action in circuit court.
142 Any and all notices given pursuant to this subsection shall be
143 given to all parties by certified or registered mail, return receipt
144 requested.

145 (d) The violation of any provision of this section by any
146 brewer or brewpub shall constitute grounds for the forfeiture of
147 the bond furnished by such brewer or brewpub in accordance
148 with the provisions of section twelve of this article. Moreover,
149 any circuit court of the county in which a distributor's principal
150 place of business is located shall have the jurisdiction and
151 power to enjoin the cancellation, termination or rescission of
152 any franchise agreement between a brewer or brewpub and such
153 distributor and, in granting an injunction to a distributor, the
154 court shall provide that the brewer or brewpub so enjoined shall
155 not supply the customers or territory of the distributor while the
156 injunction is in effect.

CHAPTER 221

(H. B. 2896 — By Delegates Douglas, Kuhn,
Perdue, Prunty, Flanigan, Angotti and Ellem)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and three, article seven, chapter twenty-two-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the oil and gas inspectors' examining board; removing minimum salary provisions; revising grievance procedures; revising procedures of appeal of suspension or dismissal; levels of grievance proceedings; and revising qualifications to serve on board.

Be it enacted by the Legislature of West Virginia:

That sections two and 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 to read as follows:

ARTICLE 7. OIL AND GAS INSPECTORS' EXAMINING BOARD.

§22C-7-2. Oil and gas inspectors; eligibility for appointment; qualifications; salary; expenses; removal.

§22C-7-3. Oil and gas inspectors' examining board created; composition; appointment, term and compensation of members; meetings; powers and duties generally.

§ 22C-7-2. Oil and gas inspectors; eligibility for appointment; qualifications; salary; expenses; removal.

1 (a) No person is eligible for appointment as an oil and gas
2 inspector or supervising inspector unless, at the time of his or
3 her probationary appointment, such person (1) is a citizen of
4 West Virginia, in good health, and of good character, reputation
5 and temperate habits; (2) has had at least six years' actual
6 relevant experience in the oil and gas industry: Provided, That
7 not exceeding three years of such experience shall be satisfied
8 by any combination of (i) a bachelor of science degree in
9 science or engineering which shall be considered the equivalent
10 of three years' actual relevant experience in the oil and gas
11 industry, (ii) an associate degree in petroleum technology which
12 shall be considered the equivalent of two years actual relevant
13 experience in the oil and gas industry, and (iii) actual relevant
14 environmental experience including, without limitation,
15 experience in wastewater, solid waste or reclamation each full
16 year of which shall be considered as a year of actual relevant
17 experience in the oil and gas industry; and (3) has good
18 theoretical and practical knowledge of oil and gas drilling and
19 production methods, practices and techniques, sound safety
20 practices and applicable mining laws.

21 (b) In order to qualify for appointment as an oil and gas
22 inspector or supervising inspector, an eligible applicant shall
23 submit to a written and oral examination by the oil and gas
24 inspectors' examining board and shall furnish such evidence of
25 good health, character and other facts establishing eligibility as
26 such board may require. If such board finds after investigation
27 and examination that an applicant (1) is eligible for appoint-
28 ment and (2) has passed all written and oral examinations, the
29 board shall add such applicant's name and grade to the register
30 of qualified eligible candidates and certify its action to the
31 director of the division of environmental protection. No

32 candidate's name may remain on the register for more than
33 three years without re-qualifying.

34 (c) Within the limits provided by law, the salary of each
35 inspector and of the supervising inspector shall be fixed by the
36 director, and the oil and gas inspectors' examining board may
37 make recommendations for salary determinations. In fixing
38 salaries of the oil and gas inspectors and of the supervising
39 inspector, the director shall consider ability, performance of
40 duty and experience. Inspectors and supervising inspectors are
41 entitled to mileage expense reimbursement at the rate estab-
42 lished for in-state travel of public employees, in the governor's
43 travel rules, as administered by the department of administra-
44 tion. No reimbursement for traveling expenses may be made
45 except upon an itemized account of such expenses submitted by
46 the inspector or supervising inspector, as the case may be, who
47 shall verify, upon oath, that such expenses were actually
48 incurred in the discharge of official duties.

49 (d)(1) For grievances concerning matters other than
50 suspension or dismissal, inspectors may file written grievances
51 in accordance with the procedures set forth in article six-a,
52 chapter twenty-nine of this code. For a level one grievance, the
53 inspector shall file the grievance with the supervising inspector.
54 For a level two grievance, the inspector shall file the grievance
55 with the chief of the office of oil and gas.

56 (2) An inspector or the supervising inspector, after having
57 received a permanent appointment, shall be suspended or
58 dismissed by the chief of the office of oil and gas only for
59 physical or mental impairment, incompetency, neglect of duty,
60 drunkenness, malfeasance in office or other good cause.

61 (3) Not less than twenty reputable citizens engaged in oil
62 and gas drilling and production operations in the state may
63 petition the chief of the office of oil and gas for the dismissal of
64 an inspector or the supervising inspector. If such petition is
65 verified by at least one of the petitioners, based on actual
66 knowledge of the affiant, and alleges facts which, if true,
67 warrant the removal of the inspector or supervising inspector,

68 the chief shall cause an investigation of the facts to be made. If,
69 after such investigation, the chief finds that there is substantial
70 evidence which, if true, warrants dismissal of the inspector or
71 supervising inspector, the chief shall bring the petition before
72 the oil and gas inspectors' examining board requesting dis-
73 missal of the inspector or supervising inspector.

74 (4) A level three grievance is a hearing before the board to
75 consider the appeal of a level two grievance, the appeal of
76 suspension or dismissal by the chief, or a citizens' petition
77 seeking dismissal of an inspector or supervising inspector. For
78 any level three grievance, the chief may not preside over the
79 hearing and may not vote. The remaining members of the board
80 shall select a member of the board to serve as acting chair, who
81 may not vote.

82 (5) An appeal of an inspector from a suspension or dis-
83 missal by the chief may be filed by the end of the tenth day
84 following the suspension or dismissal notwithstanding the time
85 limits and requirements set forth in subsection (c), section four,
86 article six-a of chapter twenty-nine of this code.

87 (6) On receipt of an appeal of a level two grievance, an
88 appeal of suspension or dismissal by the chief, or a citizens'
89 petition seeking dismissal of an inspector or the supervising
90 inspector, the oil and gas inspectors' examining board shall
91 promptly notify the inspector or supervising inspector, as the
92 case may be, to appear before it at a time and place designated
93 in said notice, which time shall be not less than fifteen days nor
94 more than thirty days thereafter notwithstanding the time limits
95 and requirements set forth in subsection (c), section four, article
96 six-a of chapter twenty-nine of this code. There shall be
97 attached to the copy of the notice served upon the inspector or
98 supervising inspector a copy of the appeal or petition filed with
99 such board.

100 (7) At the time and place designated in said notice, the oil
101 and gas inspectors' examining board shall conduct a level three
102 grievance proceeding in which the testimony shall be recorded
103 to enable a transcript to be prepared for any further appeal. The

104 board shall hear all evidence offered in support of the appeal or
105 petition and on behalf of the inspector or supervising inspector.
106 Each witness shall be sworn and a transcript shall be made of
107 all evidence taken and proceedings had at any such hearing. No
108 continuance may be granted except for good cause shown.

109 (8) The acting chair of the board may administer oaths and
110 subpoena witnesses.

111 (9) An inspector or supervising inspector who willfully
112 refuses or fails to appear before such board, or having appeared,
113 refuses to answer under oath any relevant question on the
114 ground that the inspector's testimony or answer might incrimi-
115 nate such inspector, or refuses to accept a grant of immunity
116 from prosecution on account of any relevant matter about which
117 the inspector may be asked to testify at such hearing before
118 such board, forfeits the inspector's position notwithstanding any
119 provisions to the contrary in section six, article six-a, chapter
120 twenty-nine of this code.

121 (10) If, after hearing, the oil and gas inspectors' examining
122 board finds that the inspector or supervising inspector should be
123 suspended, dismissed or otherwise disciplined, it shall enter an
124 order to that effect. An appeal of the decision of the board shall
125 proceed as a level four proceeding under the provisions of
126 subsection (d), section four, article six-a, chapter twenty-nine.
127 The provisions of subsection (e) of that section regarding an
128 expedited grievance shall not apply to oil and gas inspectors.

**§22C-7-3. Oil and gas inspectors' examining board created;
composition; appointment, term and compensation
of members; meetings; powers and duties gener-
ally.**

1 (a) (1) There is hereby continued an oil and gas inspectors'
2 examining board consisting of five members, two of whom
3 shall be ex officio members and three of whom shall be
4 appointed by the governor, by and with the advice and consent
5 of the Senate. Appointed members may be removed only for the
6 same causes and like manner as elective state officers. One
7 member of the board shall be the representative of the public at

8 large and shall be a person who is knowledgeable about the
9 subject matter of this article and has no direct financial interest
10 in oil and gas production other than the receipt of royalty
11 payments which do not exceed ten percent of his or her annual
12 income and who by reason of previous training or experience
13 may reasonably be said to represent the viewpoint of surface
14 owners or environmental organizations: *Provided*, That the
15 public member serving on the board on the first day of January,
16 two thousand one, shall remain on the board until the expiration
17 of his or her term and is also eligible for reappointment. One
18 member shall be a person who by reason of previous training
19 and experience may reasonably be said to represent the view-
20 point of independent oil and gas operators. One member shall
21 be a person who by reason of previous training and experience
22 may reasonably be said to represent the viewpoint of major oil
23 and gas producers.

24 (2) The chief of the office of oil and gas of the division of
25 environmental protection and the chief of the office of water
26 resources of the division of environmental protection or their
27 designees shall be ex officio members.

28 (3) The appointed members of the board shall be appointed
29 for overlapping terms of six years, except that the original
30 appointments shall be for terms of two, four and six years,
31 respectively. Any member whose term expires may be reap-
32 pointed by the governor.

33 (4) The board shall pay each member the same compensa-
34 tion and expense reimbursement as is paid to members of the
35 Legislature for their interim duties as recommended by the
36 citizens legislative compensation commission and authorized
37 by law for each day or portion thereof engaged in the discharge
38 of official duties.

39 (5) The chief of the office of oil and gas or the chief's
40 designee serving pursuant to subdivision two of this subsection
41 shall serve as chair of the board: *Provided*, That for any level
42 three grievance proceeding the chief or the chief's designee

43 may not serve as a chair or vote. The board shall elect a
44 secretary from its members.

45 (6) Members of the board, before performing any duty,
46 shall take and subscribe to the oath required by section five,
47 article IV of the constitution of West Virginia.

48 (7) The board shall meet at such times and places as shall
49 be designated by the chair. It is the duty of the chair to call a
50 meeting of the board on the written request of two members.
51 Notice of each meeting shall be given in writing to each
52 member by the secretary at least five days in advance of the
53 meeting. A majority of members is a quorum for the transaction
54 of business.

55 (b) In addition to other powers and duties expressly set
56 forth elsewhere in this article, the board shall:

57 (1) Establish, and from time to time revise, forms of
58 application for employment as an oil and gas inspector and
59 supervising inspector, which shall include the applicant's social
60 security number, and forms for written examinations to test the
61 qualifications of candidates, with such distinctions, if any, in
62 the forms for oil and gas inspector and supervising inspector as
63 the board may from time to time deem necessary or advisable;

64 (2) Adopt and promulgate reasonable rules relating to the
65 examination, qualification and certification of candidates for
66 appointment, and relating to hearings for removal of inspectors
67 or the supervising inspector, required to be held by this article.
68 All of such rules shall be printed and a copy thereof furnished
69 by the secretary of the board to any person upon request;

70 (3) Conduct, after public notice of the time and place
71 thereof, examinations of candidates for appointment. By
72 unanimous agreement of all members of the board, one or more
73 members of the board or an employee of the division of
74 environmental protection may be designated to give to a
75 candidate the written portion of the examination;

76 (4) Prepare and certify to the director of the division of
77 environmental protection a register of qualified eligible
78 candidates for appointment as oil and gas inspectors or as
79 supervising inspectors, with such differentiation, if any,
80 between the certification of candidates for oil and gas inspec-
81 tors and for supervising inspectors as the board may from time
82 to time consider necessary or advisable. The register shall list
83 all qualified eligible candidates in the order of their grades, the
84 candidate with the highest grade appearing at the top of the list.
85 After each meeting of the board held to examine such candi-
86 dates and at least annually, the board shall prepare and submit
87 to the director of the division of environmental protection a
88 revised and corrected register of qualified eligible candidates
89 for appointment, deleting from such revised register all persons:
90 (a) Who are no longer residents of West Virginia; (b) who have
91 allowed a calendar year to expire without, in writing, indicating
92 their continued availability for such appointment; (c) who have
93 been passed over for appointment for three years; (d) who have
94 become ineligible for appointment since the board originally
95 certified that such persons were qualified and eligible for
96 appointment; or (e) who, in the judgment of at least three
97 members of the board, should be removed from the register for
98 good cause;

99 (5) Cause the secretary of the board to keep and preserve
100 the written examination papers, manuscripts, grading sheets and
101 other papers of all applicants for appointment for such period
102 of time as may be established by the board. Specimens of the
103 examinations given, together with the correct solution of each
104 question, shall be preserved permanently by the secretary of the
105 board;

106 (6) Issue a letter or written notice of qualification to each
107 successful eligible candidate;

108 (7) Hear and determine proceedings for the suspension,
109 dismissal or other discipline of inspectors or the supervising
110 inspector in accordance with the provisions of this article;

111 (8) Make an annual report to the governor concerning the
112 administration of oil and gas inspection personnel in the state
113 service; making such recommendations as the board considers
114 to be in the public interest; and

115 (9) Render such advice and assistance to the director of the
116 division of environmental protection as the director shall from
117 time to time determine necessary or desirable in the perfor-
118 mance of such duties.

CHAPTER 222

**(H. B. 2885 — By Delegates Butcher, Givens, Stemple,
Craig, Coleman, Frederick and H. White)**

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two-a, article three, chapter seven of said code, all relating to displaying flags at the state capitol, county courthouses or other governmental buildings; requiring the prisoner-of-war/missing-in-action flags be flown over the state capitol on certain days; providing counties and municipalities with the option to purchase prisoner-of-war/missing-in-action flags for display over courthouses or other governmental buildings on certain days.

Be it enacted by the Legislature of West Virginia:

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

Chapter

4. The Legislature.

7. County Commissions and Officers.

CHAPTER 4. THE LEGISLATURE.

ARTICLE 1. OFFICERS, MEMBERS AND EMPLOYEES; APPROPRIATIONS; INVESTIGATIONS; DISPLAY OF FLAGS; RECORDS; USE OF CAPITOL BUILDING; PREFILING OF BILLS AND RESOLUTIONS; STANDING COMMITTEES; INTERIM MEETINGS; NEXT MEETING OF THE SENATE.

§4-1-7. Flags displayed during sessions.

1 The flag of the United States, and the flag of the state of
2 West Virginia shall be flown over the state capitol building
3 year-round; and the POW-MIA flag shall be flown over the
4 state capitol building on Memorial Day, Armed Forces Day,
5 Flag Day, Independence Day, National POW/MIA Recognition
6 Day and Veteran's Day each year.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 3. COUNTY PROPERTY.

§7-3-2a. County commissions to purchase and display flags.

1 The county commission of every county of the state shall,
2 out of its general revenue fund, cause to be purchased a United
3 States flag and a flag of the state of West Virginia, four feet by
4 six feet in dimensions and of regulation bunting, or of other
5 appropriate size and quality, for its courthouse, and shall
6 require the same to be displayed from the courthouse, or from
7 an appropriate staff or pole near thereto, every day between the
8 hours of sunrise and sunset, except in inclement weather. Each
9 county court shall likewise cause to be purchased a United
10 States flag and a flag of the state of West Virginia, and require
11 same to be displayed at all times in the circuit courtroom of the
12 county. Each county and any municipality therein shall have the
13 option of purchasing a POW-MIA flag to be displayed from its
14 courthouse or other governmental building alongside the state

15 flag and United States flag on Memorial Day, Armed Forces
16 Day, Flag Day, Independence Day, National POW/MIA
17 Recognition Day and Veteran's Day each year. It shall be the
18 duty of the custodian or other person in charge of the court-
19 house to see that the flags are displayed as herein provided.

CHAPTER 223

(Com. Sub. for H. B. 2371 — By Delegates Michael and Mezzatesta)

[Passed April 12, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section six, article three-b, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections two, three, four, five, seven, eight and ten of said article, all relating to the licensing of electricians; permitting equivalent licensing of certain former residents; authorizing legislative rules; and increasing fines.

Be it enacted by the Legislature of West Virginia:

That section six, article three-b, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections two, three, four, five, seven, eight and ten of said article, be amended and reenacted, all to read as follows:

ARTICLE 3B. SUPERVISION OF ELECTRICIANS.

§29-3B-2. Necessity of license; definitions.

§29-3B-3. Exemptions; nonapplicability of license requirements; legislative rules for limited reciprocity.

§29-3B-4. Licenses; classes of licenses; issuance of licenses by commissioner; qualifications required for license; nontransferability and non-assignability of licenses; expiration of license; renewal; reciprocity.

§29-3B-5. Rules; applications and examinations; fees.

§29-3B-7. Denial of license; suspension and revocation of license.

§29-3B-8. Effect of noncompliance with article; failure to obtain license.

§29-3B-10. Disposition of fees, fines and other receipts.

§29-3B-2. Necessity of license; definitions.

1 After the effective date of this article, no electrical work
2 may be performed, offered or engaged in for compensation or
3 hire within the state of West Virginia by any person, firm or
4 corporation unless such person, firm or corporation possesses
5 a license and a certificate issued by the state fire marshal in
6 accordance with this article, and a copy of the license is posted
7 on any job in which electrical work is being performed for hire.

8 As used in this article:

9 (a) “Apprentice electrician” means a person with interest in
10 and an aptitude for performing electrical work but who alone is
11 not capable of performing electrical work unless directly
12 supervised by a higher license classification.

13 (b) “Electrical contractor” means a person, firm or corpora-
14 tion who engages in the business of electrical work and
15 employs master electricians, journeyman electricians, appren-
16 tice electricians or other related workers for the construction,
17 alteration or repair of any electrical wiring, equipment or
18 systems as defined in the scope of the national electric code.

19 (c) “Electrical work” means the installation of wires,
20 conduits, apparatus, fixtures, other appliances, equipment or
21 systems for transmitting, carrying, controlling or using electric-
22 ity as defined in the scope of the national electric code.

23 (d) “Journeyman electrician” means a person qualified by
24 at least four years of electrical work experience to do any work
25 installing wires, conduits, apparatus, equipment, fixtures and
26 other appliances, provided that this classification is not autho-
27 rized to design electrical systems.

28 (e) “License” means a valid and current certificate of
29 competency issued by the state fire marshal.

30 (f) "Master electrician" means a person with at least five
31 years of electrical work experience, including experience in all
32 phases of electrical wiring and installation, who is competent to
33 design electrical systems, and to instruct and supervise the
34 electrical work of journeyman electricians, apprentice electricians,
35 and other related workers.

36 (g) "Specialty electrician" means a person qualified to
37 perform electrical work in a limited or specialized area.

**§29-3B-3. Exemptions; nonapplicability of license requirements;
legislative rules for limited reciprocity.**

1 (a) This article does not apply to and no license may be
2 required for: (1) A person who performs electrical work with
3 respect to any property owned or leased by that person; (2) a
4 person who performs electrical work at any manufacturing plant
5 or other industrial establishment as an employee of the person,
6 firm or corporation operating the plant or establishment; (3) a
7 person who performs electrical work while employed by an
8 employer who engages in the business of selling appliances at
9 retail, so long as such electrical work is performed incident to
10 the installation or repair of appliances sold by the employer; (4)
11 a person who, while employed by a public utility or its affiliate,
12 performs electrical work in connection with the furnishing of
13 public utility service; or (5) any government employee performing
14 electrical work on government property.

15 (b)(1) Notwithstanding any other provision of this article to
16 the contrary, a journeyman or master electrician license may be
17 issued for a person who is a former resident of this state, who
18 formerly held an electrician's license issued by this state, who
19 has obtained an equivalent electrician license from another
20 state, and who returns to this state as a permanent resident,
21 without requiring the person to meet the application or examination
22 requirements that would otherwise be imposed on the
23 person by the requirements of this article when the issuance of
24 the license is permitted by legislative rules promulgated
25 pursuant to the provisions of this subsection.

26 (2) The state fire marshal shall propose rules for legislative
27 approval in accordance with the provisions of article three,
28 chapter twenty-nine-a of this code to provide for the licensing
29 of electricians with equivalent qualifications described in
30 subdivision (1) of this subsection. Notwithstanding any other
31 provision of this code to the contrary, the legislative rules
32 described in this subsection may not be filed as emergency
33 rules.

**§29-3B-4. Licenses; classes of licenses; issuance of licenses by
commissioner; qualifications required for license;
nontransferability and nonassignability of licenses;
expiration of license; renewal; reciprocity.**

1 (a) The following classes of license may be issued by the
2 state fire marshal: "Master electrician license," "journeyman
3 electrician license," "apprentice electrician license" and
4 "temporary electrician license." Additional classes of specialty
5 electrician license may be issued by the state fire marshal.

6 (b) The state fire marshal shall issue the appropriate class
7 of license upon a finding that the applicant possesses the
8 qualifications for the class of license to be issued.

9 (c) The state fire marshal shall propose rules for legislative
10 approval regarding qualifications for testing, issuance of
11 licenses, and renewal in accordance with the provisions of
12 article three, chapter twenty-nine-a of this code.

13 (d) To the extent that other jurisdictions provide for the
14 licensing of electricians, the state fire marshal may grant the
15 same or equivalent classification of license without written
16 examination upon satisfactory proof furnished to the state fire
17 marshal that the qualifications of the applicant are equal to the
18 qualifications required by this article and upon payment of the
19 required fee: *Provided*, That as a condition to reciprocity, the
20 other jurisdictions must extend to licensed electricians of this
21 state, the same or equivalent classification.

22 (e) In addition to any other information required, the
23 applicant's social security number shall be recorded on any

24 application for a license submitted pursuant to the provisions of
25 this section.

§29-3B-5. Rules; applications and examinations; fees.

1 (a) The state fire marshal shall propose rules for legislative
2 approval in accordance with the provisions of article three,
3 chapter twenty-nine-a of this code to implement the provisions
4 of this article. Rules adopted by the state fire marshal and
5 presently in effect will remain in effect until and unless the state
6 fire marshal adopts new rules, and the state fire marshal may
7 adopt any or all of the rules presently in effect.

8 (b) The state fire marshal shall prepare and arrange for the
9 receipt of applications from those who intend to perform
10 electrical work in the state of West Virginia. Such application
11 shall be sufficiently detailed to enable the state fire marshal to
12 determine the presence or absence of an applicant's qualifica-
13 tions for a license of a particular class. The state fire marshal
14 may require applicants to supply affidavits or other documents
15 attesting to the applicant's qualifications from past employers,
16 other electricians, engineers and others with knowledge of the
17 applicant's qualifications. The state fire marshal may make
18 such other inquiries as he or she considers necessary to deter-
19 mine the qualifications of the applicant. An applicant expressly
20 consents to such inquiries by the state fire marshal by his or her
21 application.

§29-3B-7. Denial of license; suspension and revocation of license.

1 (a) The state fire marshal may deny a license to any
2 applicant who fails to comply with the rules established by the
3 state fire marshal, or who lacks the necessary qualifications.

4 (b) The state fire marshal may upon complaint or upon his
5 or her own inquiry and, after notice to the licensee, suspend or
6 revoke a licensee's license if:

7 (1) The license was granted upon an application or docu-
8 ments supporting such application which materially misstated
9 the terms of the applicant's qualifications or experience;

10 (2) The licensee subscribed or vouched for a material
11 misstatement by an applicant;

12 (3) The licensee incompetently or unsafely performs
13 electrical work;

14 (4) The licensee violated any statute of the state of West
15 Virginia, any rule lawfully promulgated by an agency of the
16 state of West Virginia or any ordinance of any municipality or
17 county of the state of West Virginia which protects the con-
18 sumer or public against unfair, unsafe, unlawful or improper
19 business practices; or

20 (5) The licensee fails to comply with any rule of the state
21 fire marshal promulgated to fulfill his responsibilities under this
22 article.

23 (c) Any person aggrieved by an order or decision of the
24 state fire marshal under this article is entitled to judicial review
25 as provided by section eighteen, article three of this chapter and
26 by chapter twenty-nine-a of this code.

**§29-3B-8. Effect of noncompliance with article; failure to obtain
license.**

1 Any person, firm, corporation or employee thereof, or any
2 representative, member or officer of such firm or corporation,
3 individually, entering upon or engaging in the business of
4 performing any electrical work as defined in this article,
5 without obtaining the required license or otherwise complying
6 with this article, is for the first offense guilty of a misdemeanor,
7 and, upon conviction thereof, shall be fined not less than one
8 hundred dollars, nor more than five hundred dollars. For a
9 second and each subsequent offense, the penalty and punish-
10 ment is a fine of not less than five hundred dollars nor more
11 than one thousand dollars.

12 Each day during which such electrical work is performed
13 without the required license or while in noncompliance with

14 any of the provisions of this article, after official notice that
15 such work is unlawful, is a separate offense.

16 Any electrical work performed by a person, firm or
17 corporation which is determined by the state fire marshal to
18 constitute a safety or health hazard to members of the public or
19 any electrical work of an extensive nature being performed by
20 any person without the required license or otherwise in non-
21 compliance with the requirements of this article or contrary to
22 an order or rule promulgated lawfully by the state fire marshal,
23 is subject to being issued a citation or a civil action in the name
24 of the state in the circuit court of the county where such work
25 is being performed for an injunction against such person, firm
26 or corporation, enjoining such work or violation. A circuit court
27 by mandatory or prohibitory injunction may compel compliance
28 with the provisions of this article, with the lawful orders of the
29 state fire marshal and with any final decision of the state fire
30 marshal or state fire commission. The state fire marshal shall be
31 represented in all such proceedings by the attorney general or
32 his assistants.

§29-3B-10. Disposition of fees, fines and other receipts.

1 All fees shall be paid to the state fire marshal. All fines
2 shall be paid into the general revenue of the state. Such receipts
3 shall be deposited by him in a special account with the state
4 treasurer for the use of the state fire marshal as provided in
5 subsection (c), section twelve-b, article three of this chapter.

CHAPTER 224

**(H. B. 2815 — By Delegates Douglas, Staton, Leach,
Amores, Michael, Compton and Fleischauer)**

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven-a, article one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing education for certain health care professionals.

Be it enacted by the Legislature of West Virginia:

That section seven-a, 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:

**ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE
BOARDS OF EXAMINATION OR REGISTRATION
REFERRED TO IN CHAPTER.**

§30-1-7a. Continuing education.

1 (a) Each board referred to in this chapter shall establish
2 continuing education requirements as a prerequisite to license
3 renewal. Each board shall develop continuing education criteria
4 appropriate to its discipline, which shall include, but not be
5 limited to, course content, course approval, hours required and
6 reporting periods.

7 (b) Notwithstanding any other provision of this code or the
8 provision of any rule to the contrary, each person issued a
9 license to practice medicine and surgery or a license to practice
10 podiatry or a license as a physician assistant by the West
11 Virginia board of medicine, each person licensed as a pharma-
12 cist by the West Virginia board of pharmacy, each person
13 licensed to practice registered professional nursing or licensed
14 as an advanced nurse practitioner by the West Virginia board of
15 examiners for registered professional nurses, each person
16 licensed as a licensed practical nurse by the West Virginia state
17 board of examiners for licensed practical nurses and each
18 person licensed to practice medicine and surgery as an osteo-
19 pathic physician and surgeon or certified as an osteopathic

20 physician assistant by the West Virginia board of osteopathy
21 shall complete two hours of continuing education coursework
22 in the subject of end-of-life care including pain management
23 during each continuing education reporting period. The two
24 hours shall be part of the total hours of continuing education
25 required by each board by rule and not two additional hours.

CHAPTER 225

(Com. Sub. for H. B. 2227 — By Delegates
Douglas, Perdue and Manchin)

[Passed April 12, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting an annual license by endorsement for summer camp physicians.

Be it enacted by the Legislature of West Virginia:

That section eleven, 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.

§30-3-11. Endorsement of licenses to practice medicine and surgery and podiatry; fees; temporary license; summer camp doctors.

- 1 (a) Any person seeking to be licensed to practice medicine
- 2 and surgery in this state who holds a valid license to practice
- 3 medicine and surgery attained under requirements substantially
- 4 similar to the requirement of section ten of this article from

5 another state, the District of Columbia, the Commonwealth of
6 Puerto Rico or Canada, and any person seeking to be licensed
7 to practice podiatry in this state who holds a valid license to
8 practice podiatry attained under requirements substantially
9 similar to the requirements in section ten of this article from
10 another state, territory or foreign country or the District of
11 Columbia shall be issued a license to practice medicine and
12 surgery or podiatry, as appropriate, in this state if he or she
13 meets the following requirements:

14 (1) He or she must submit an application to the board on
15 forms provided by the board and remit a reasonable licensure
16 fee, the amount of such reasonable fee to be set by the board.
17 The application must, as a minimum, require a statement that
18 the applicant is a licensed physician or podiatrist in good
19 standing and indicate whether any medical disciplinary action
20 has been taken against him or her in the past; and

21 (2) He or she must demonstrate to the satisfaction of the
22 board that he or she has the requisite qualifications to provide
23 the same standard of care as a physician or podiatrist initially
24 licensed in this state.

25 (b) The board may investigate the applicant and may
26 request a personal interview to review the applicant's qualifica-
27 tions and professional credentials.

28 (c) The board may, at its discretion, grant a temporary
29 license to an individual applying for licensure under this section
30 if the individual meets the requirements of subdivision (1),
31 subsection (a) of this section. Such temporary license shall only
32 be valid until the board is able to meet and consider the
33 endorsement request. The board may fix and collect a reason-
34 able fee for a temporary license, the amount of such reasonable
35 fee to be set by the board.

36 (d) The application fee shall be waived, and to the extent
37 consistent with the integrity of the licensure process and the
38 requirements for licensure as set forth in this section and in the
39 relevant legislative rules, the board shall expedite its processing

40 of an individual's application to practice medicine and surgery,
41 or practice podiatry: *Provided*, That the sole purpose for
42 licensure is to provide services at a children's summer camp for
43 not more than one specifically designated three week period
44 annually. The license shall be issued for a period of the specifi-
45 cally designated three weeks only, on an annual basis.

CHAPTER 226

(Com. Sub. for H. B. 2751 — By Delegates
Amores, Fleischauer, Craig and Smirl)

[Passed April 13, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended by adding thereto a new section, designated section eleven-a, all relating to board of medicine granting a limited license to practice medicine and surgery by endorsement without examination to medical school faculty; establishing qualifications; authorizing board to investigate and interview applicant; limiting practice; term of limited license; requiring biennial license renewal and exception; requiring physician to keep licenses granted by other jurisdictions in good standing.

Be it enacted by the Legislature of West Virginia:

That article three, chapter thirty 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, all to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-11a. Endorsement of licenses to practice medicine and surgery as medical school faculty.

1 (a) The board shall issue a limited license to practice
2 medicine and surgery without examination to an individual
3 appointed to a West Virginia medical school faculty who holds
4 a valid license to practice medicine and surgery from another
5 state, the District of Columbia, the Commonwealth of Puerto
6 Rico or Canada, and who has completed the application form
7 prescribed by the board, remitted a nonrefundable application
8 fee in the amount of one hundred fifty dollars and who presents
9 satisfactory proof to the board that:

10 (1) He or she is of good moral and professional character;

11 (2) He or she is physically and mentally capable of engag-
12 ing in the practice of medicine and surgery;

13 (3) He or she is able to communicate in English;

14 (4) He or she is a graduate of a school of medicine which is
15 approved by the liaison committee on medical education or by
16 the World Health Organization or by the board with the degree
17 of doctor of medicine or its equivalent;

18 (5) He or she has successfully completed one year of
19 approved graduate clinical training or a fellowship of at least
20 one year, or has received training which the board determines
21 to be equivalent to or exceeds the one year graduate clinical
22 training or fellowship requirement;

23 (6) He or she has not committed any act in this or any other
24 jurisdiction which would constitute the basis for disciplining a
25 physician under section fourteen of this article; and

26 (7) He or she has been offered and has accepted a faculty
27 appointment to teach in a medical school in this state.

28 (b) The board shall investigate the applicant and may
29 request a personal interview to review the applicant's qualifica-
30 tions and professional credentials.

31 (c) The medical practice of a physician licensed under this
32 section is limited to the medical center of the medical school to
33 which the physician has been appointed to the faculty.

34 (d) A limited license issued under this section is valid for
35 a term of one year. No limited license issued pursuant to this
36 section may be renewed.

37 (e) Before the limited license has expired, a physician
38 licensed under this section may apply for a license to practice
39 medicine and surgery in West Virginia pursuant to the provi-
40 sions of section twelve of this article: *Provided*, That any
41 license granted by the board pursuant to this subsection, retains
42 the practice limitations set out in subsection (c) of this section.

43 (f) Any license issued under this section will automatically
44 expire and be void, without notice to the physician, when the
45 physician's faculty appointment is terminated. The dean of the
46 medical school shall notify the board within five days of the
47 termination of a faculty appointment of a physician licensed
48 pursuant to this section.

49 (g) A physician licensed under this section must keep all
50 medical licenses issued by other jurisdictions in good standing
51 and must notify the board, within fifteen days of its occurrence,
52 of any denial, suspension or revocation of or any limitation
53 placed on a medical license issued by another jurisdiction.

CHAPTER 227

(H. B. 3239 — By Delegates Douglas and Kuhn)

[Passed April 10, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to changing the number of hours of continuing education required to be completed by a physician assistant.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-16. Physician assistants; definitions; board of medicine rules; annual report; licensure; temporary license; relicensure; job description required; revocation or suspension of licensure; responsibilities of supervising physician; legal responsibility for physician assistants; reporting by health care facilities; identification; limitations on employment and duties; fees; continuing education; unlawful representation of physician assistant as a physician; criminal penalties.

1 (a) As used in this section:

2 (1) "Physician assistant" means an assistant to a physician
3 who is a graduate of an approved program of instruction in
4 primary health care or surgery, has attained a baccalaureate or
5 master's degree, has passed the national certification examina-
6 tion and is qualified to perform direct patient care services
7 under the supervision of a physician;

8 (2) "Physician assistant-midwife" means a physician
9 assistant who meets all qualifications set forth under subdivi-
10 sion (1) of this subsection and fulfills the requirements set forth
11 in subsection (d) of this section; is subject to all provisions of
12 this section; and assists in the management and care of a
13 woman and her infant during the prenatal, delivery and
14 postnatal periods;

15 (3) “Supervising physician” means a doctor or doctors of
16 medicine or podiatry permanently licensed in this state who
17 assume legal and supervisory responsibility for the work or
18 training of any physician assistant under his or her supervision;

19 (4) “Approved program” means an educational program for
20 physician assistants approved and accredited by the committee
21 on allied health education and accreditation on behalf of the
22 American medical association or its successor; and

23 (5) “Health care facility” means any licensed hospital,
24 nursing home, extended care facility, state health or mental
25 institution, clinic or physician’s office.

26 (b) The board shall promulgate rules pursuant to the
27 provisions of article three, chapter twenty-nine-a of this code
28 governing the extent to which physician assistants may function
29 in this state. The rules shall provide that the physician assistant
30 is limited to the performance of those services for which he or
31 she is trained and that he or she performs only under the
32 supervision and control of a physician permanently licensed in
33 this state, but that supervision and control does not require the
34 personal presence of the supervising physician at the place or
35 places where services are rendered if the physician assistant’s
36 normal place of employment is on the premises of the supervis-
37 ing physician. The supervising physician may send the physi-
38 cian assistant off the premises to perform duties under his or her
39 direction, but a separate place of work for the physician
40 assistant may not be established. In promulgating the rules, the
41 board shall allow the physician assistant to perform those
42 procedures and examinations and in the case of certain autho-
43 rized physician assistants to prescribe at the direction of his or
44 her supervising physician in accordance with subsection (l) of
45 this section those categories of drugs submitted to it in the job
46 description required by this section. Certain authorized physi-
47 cian assistants may pronounce death in accordance with the
48 rules proposed by the board which receive legislative approval.
49 The board shall compile and publish an annual report that

50 includes a list of currently licensed physician assistants and
51 their employers and location in the state.

52 (c) The board shall license as a physician assistant any
53 person who files an application together with a proposed job
54 description and furnishes satisfactory evidence to it that he or
55 she has met the following standards:

56 (1) He or she is a graduate of an approved program of
57 instruction in primary health care or surgery;

58 (2) He or she has passed the certifying examination for a
59 primary care physician assistant administered by the national
60 commission on certification of physician assistants and has
61 maintained certification by that commission so as to be cur-
62 rently certified;

63 (3) He or she is of good moral character; and

64 (4) He or she has attained a baccalaureate or master's
65 degree.

66 (d) The board shall license as a physician assistant-midwife
67 any person who meets the standards set forth under subsection
68 (c) of this section and, in addition thereto, the following
69 standards:

70 (1) He or she is a graduate of a school of midwifery
71 accredited by the American college of nurse-midwives;

72 (2) He or she has passed an examination approved by the
73 board;

74 (3) He or she practices midwifery under the supervision of
75 a board certified obstetrician, gynecologist or a board certified
76 family practice physician who routinely practices obstetrics.

77 (e) The board may license as a physician assistant any
78 person who files an application together with a proposed job
79 description and furnishes satisfactory evidence that he or she is

80 of good moral character and meets either of the following
81 standards:

82 (1) He or she is a graduate of an approved program of
83 instruction in primary health care or surgery prior to the first
84 day of July, one thousand nine hundred ninety-four, and has
85 passed the certifying examination for a physician assistant
86 administered by the national commission on certification of
87 physician assistants and has maintained certification by that
88 commission so as to be currently certified; or

89 (2) He or she had been certified by the board as a physician
90 assistant then classified as "Type B", prior to the first day of
91 July, one thousand nine hundred eighty-three.

92 Licensure of an assistant to a physician practicing the
93 specialty of ophthalmology is permitted under this section:
94 *Provided*, That a physician assistant may not dispense a
95 prescription for a refraction.

96 (f) When any graduate of an approved program submits an
97 application to the board for a physician assistant license,
98 accompanied by a job description as referenced by this section,
99 the board shall issue to that applicant a temporary license
100 allowing that applicant to function as a physician assistant until
101 the applicant successfully passes the national commission on
102 certification of physician assistants' certifying examination:
103 *Provided*, That the applicant shall sit for and obtain a passing
104 score on the examination next offered following graduation
105 from the approved program. No applicant shall receive a
106 temporary license who, following graduation from an approved
107 program, has sat for and not obtained a passing score on the
108 examination. A physician assistant who has not been certified
109 by the national board of medical examiners on behalf of the
110 national commission on certification of physician assistants will
111 be restricted to work under the direct supervision of the
112 supervising physician.

113 A physician assistant who has been issued a temporary
114 license shall, within thirty days of receipt of written notice from

115 the national commission on certification of physician assistants
116 of his or her performance on the certifying examination, notify
117 the board in writing of his or her results. In the event of failure
118 of that examination, the temporary license shall expire and
119 terminate automatically, and the board shall so notify the
120 physician assistant in writing.

121 (g) Any physician applying to the board to supervise a
122 physician assistant shall affirm that the range of medical
123 services set forth in the physician assistant's job description are
124 consistent with the skills and training of the supervising
125 physician and the physician assistant. Before a physician
126 assistant can be employed or otherwise use his or her skills, the
127 supervising physician and the physician assistant must obtain
128 approval of the job description from the board. The board may
129 revoke or suspend any license of an assistant to a physician for
130 cause, after giving that assistant an opportunity to be heard in
131 the manner provided by article five, chapter twenty-nine-a of
132 this code and as set forth in rules duly adopted by the board.

133 (h) The supervising physician is responsible for observing,
134 directing and evaluating the work, records and practices of each
135 physician assistant performing under his or her supervision. He
136 or she shall notify the board in writing of any termination of his
137 or her supervisory relationship with a physician assistant within
138 ten days of the termination. The legal responsibility for any
139 physician assistant remains with the supervising physician at all
140 times, including occasions when the assistant under his or her
141 direction and supervision, aids in the care and treatment of a
142 patient in a health care facility. In his or her absence, a super-
143 vising physician must designate an alternate supervising
144 physician, however, the legal responsibility remains with the
145 supervising physician at all times. A health care facility is not
146 legally responsible for the actions or omissions of the physician
147 assistant unless the physician assistant is an employee of the
148 facility.

149 (i) The acts or omissions of a physician assistant employed
150 by health care facilities providing inpatient or outpatient

151 services shall be the legal responsibility of the facilities.
152 Physician assistants employed by facilities in staff positions
153 shall be supervised by a permanently licensed physician.

154 (j) A health care facility shall report in writing to the board
155 within sixty days after the completion of the facility's formal
156 disciplinary procedure, and also after the commencement, and
157 again after the conclusion, of any resulting legal action, the
158 name of any physician assistant practicing in the facility whose
159 privileges at the facility have been revoked, restricted, reduced
160 or terminated for any cause including resignation, together with
161 all pertinent information relating to the action. The health care
162 facility shall also report any other formal disciplinary action
163 taken against any physician assistant by the facility relating to
164 professional ethics, medical incompetence, medical malprac-
165 tice, moral turpitude or drug or alcohol abuse. Temporary
166 suspension for failure to maintain records on a timely basis or
167 failure to attend staff or section meetings need not be reported.

168 (k) When functioning as a physician assistant, the physician
169 assistant shall wear a name tag that identifies him or her as a
170 physician assistant. A two and one-half by three and one-half
171 inch card of identification shall be furnished by the board upon
172 licensure of the physician assistant.

173 (l) A physician assistant may write or sign prescriptions or
174 transmit prescriptions by word of mouth, telephone or other
175 means of communication at the direction of his or her supervis-
176 ing physician. The board shall promulgate rules pursuant to the
177 provisions of article three, chapter twenty-nine-a of this code
178 governing the eligibility and extent to which a physician
179 assistant may prescribe at the direction of the supervising
180 physician. The rules shall include, but not be limited to, the
181 following:

182 (1) Provisions for approving a state formulary classifying
183 pharmacologic categories of drugs that may be prescribed by a
184 physician assistant:

185 (A) The following categories of drugs shall be excluded
186 from the formulary: Schedules I and II of the uniform con-
187 trolled substances act, anticoagulants, antineoplastic, radio-
188 pharmaceuticals, general anesthetics and radiographic contrast
189 materials;

190 (B) Drugs listed under Schedule III shall be limited to a
191 seventy-two hour supply without refill;

192 (C) Categories of other drugs may be excluded as deter-
193 mined by the board;

194 (2) All pharmacological categories of drugs to be pre-
195 scribed by a physician assistant shall be listed in each job
196 description submitted to the board as required in subsection (g)
197 of this section;

198 (3) The maximum dosage a physician assistant may
199 prescribe;

200 (4) A requirement that to be eligible for prescription
201 privileges, a physician assistant shall have performed patient
202 care services for a minimum of two years immediately preced-
203 ing the submission to the board of the job description contain-
204 ing prescription privileges and shall have successfully com-
205 pleted an accredited course of instruction in clinical pharmacol-
206 ogy approved by the board; and

207 (5) A requirement that to maintain prescription privileges,
208 a physician assistant shall continue to maintain national
209 certification as a physician assistant, and in meeting the
210 national certification requirements shall complete a minimum
211 of ten hours of continuing education in rational drug therapy in
212 each certification period. Nothing in this subsection shall be
213 construed to permit a physician assistant to independently
214 prescribe or dispense drugs.

215 (m) A supervising physician may not supervise at any one
216 time more than three full-time physician assistants or their
217 equivalent, except that a physician may supervise up to four
218 hospital-employed physician assistants. No physician shall
219 supervise more than four physician assistants at any one time.

220 A physician assistant may not sign any prescription, except
221 in the case of an authorized physician assistant at the direction
222 of his or her supervising physician in accordance with the
223 provisions of subsection (l) of this section. A physician assis-
224 tant may not perform any service that his or her supervising
225 physician is not qualified to perform. A physician assistant may
226 not perform any service that is not included in his or her job
227 description and approved by the board as provided for in this
228 section.

229 The provisions of this section do not authorize any physi-
230 cian assistant to perform any specific function or duty delegated
231 by this code to those persons licensed as chiropractors, dentists,
232 dental hygienists, optometrists or pharmacists or certified as
233 nurse anesthetists.

234 (n) Each application for licensure submitted by a licensed
235 supervising physician under this section is to be accompanied
236 by a fee of one hundred dollars. A fee of fifty dollars is to be
237 charged for the biennial renewal of the license. A fee of
238 twenty-five dollars is to be charged for any change of supervis-
239 ing physician.

240 (o) Beginning with the biennial renewal forms completed
241 by physician assistants and submitted to the board in the year
242 one thousand nine hundred ninety-three, as a condition of
243 renewal of physician assistant license, each physician assistant
244 shall provide written documentation pursuant to rules promul-
245 gated by the board in accordance with chapter twenty-nine-a of
246 this code of participation in and successful completion during

247 the preceding two-year period of continuing education, in the
248 number of hours specified by the board by rule, designated as
249 Category I by the American medical association, American
250 academy of physician assistants or the academy of family
251 physicians, and continuing education, in the number of hours
252 specified by the board by rule, designated as Category II by the
253 association or either academy. Notwithstanding any provision
254 of this chapter to the contrary, failure to timely submit the
255 required written documentation shall result in the automatic
256 suspension of any license as a physician assistant until the
257 written documentation is submitted to and approved by the
258 board.

259 (p) It is unlawful for any physician assistant to represent to
260 any person that he or she is a physician, surgeon or podiatrist.
261 Any person who violates the provisions of this subsection is
262 guilty of a felony and, upon conviction thereof, shall be
263 imprisoned in the penitentiary for not less than one nor more
264 than two years, or be fined not more than two thousand dollars,
265 or both fined and imprisoned.

266 (q) All physician assistants holding valid certificates issued
267 by the board prior to the first day of July, one thousand nine
268 hundred ninety-two, shall be considered to be licensed under
269 this section.

CHAPTER 228

**(Com. Sub. for S. B. 258 — By Senators
Bowman, Kessler, Snyder and Boley)**

[Passed March 26, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact article four, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article four-b, all relating to professions and occupations; regulating the practice of dentistry and dental laboratory services generally; establishing licensure and permit requirements for dentists and dental hygienists; and providing a civil cause of action and criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

Article

4. West Virginia Dental Practice Act.

4B. Dental Laboratory Services.

ARTICLE 4. WEST VIRGINIA DENTAL PRACTICE ACT.

§30-4-1. License required to practice.

§30-4-2. Short title.

§30-4-3. Definitions.

§30-4-4. Board of dental examiners.

§30-4-5. Powers of the board.

§30-4-6. Rule-making authority.

§30-4-7. Fees; special revenue account; administrative fines.

§30-4-8. License requirements; dentists.

§30-4-9. Dentist from another state; license to practice dentistry in this state.

§30-4-10. License requirements; dental hygienist.

§30-4-11. Dental hygienist from another state; license to practice dental hygiene in this state.

§30-4-12. License renewal; conditions of renewal.

§30-4-13. Temporary permits; dental intern or resident permit; teaching permit; dentist.

§30-4-14. Temporary permits; teaching permit; dental hygienist.

§30-4-15. Scope of practice; dentist.

§30-4-16. Specialties; dentist.

§30-4-17. Scope of practice; dental hygienist.

§30-4-18. Scope of practice; dental assistant.

§30-4-19. Notification; changing dental office; adding dental office.

§30-4-20. Refusal to issue or renew, suspension or revocation of license; disciplinary action.

§30-4-21. Complaints; investigations.

§30-4-22. Hearing and judicial review.

§30-4-23. Reinstatement.

§30-4-24. Unlawful acts.

§30-4-25. Injunctions.

§30-4-26. Criminal proceedings; penalties.

§30-4-27. Single act evidence of practice.

§30-4-28. Dental corporations.

§30-4-29. Inapplicability of article.

§30-4-30. Termination date.

§30-4-1. License required to practice.

- 1 In order to protect public health and safety, any person
- 2 practicing or offering to practice as a dentist or dental hygienist
- 3 must submit evidence that he or she is qualified to practice and
- 4 is licensed as provided in this article.

§30-4-2. Short title.

- 1 This article shall be known and may be cited as the “West
- 2 Virginia Dental Practice Act”.

§30-4-3. Definitions.

- 1 As used in this article, the following words and terms have
- 2 the following meanings, unless the context clearly indicates
- 3 otherwise:

4 (1) “Approved dental hygiene program” means a program
5 that is approved by the board and is accredited or its educa-
6 tional standards are deemed by the board to be substantially
7 equivalent to those required by the commission on dental
8 accreditation of the American dental association.

9 (2) “Approved dental school, college or dental department
10 of a university” means a dental school, college or dental

11 department of a university that is approved by the board and is
12 accredited or its educational standards are deemed by the board
13 to be substantially equivalent to those required by the commis-
14 sion on dental accreditation of the American dental association.

15 (3) "Authorize" means that the dentist is giving permission
16 or approval to dental auxiliary personnel to perform delegated
17 procedures in accordance with the dentist's diagnosis and
18 treatment plan.

19 (4) "Board" means the West Virginia board of dental
20 examiners;

21 (5) "Certificate of qualification" means a certificate
22 authorizing a dentist to practice a specialty.

23 (6) "Delegated procedures" means those procedures
24 specified by law or by rule of the board and performed by
25 dental auxiliary personnel under the direct supervision of a
26 licensed dentist.

27 (7) "Dental assistant" means a person qualified by educa-
28 tion, training and experience who aids or assists a dentist in the
29 delivery of patient care in accordance with delegated proce-
30 dures or who may perform nonclinical duties in the dental
31 office: *Provided*, That no occupational title other than dental
32 assistant shall be used to describe this auxiliary.

33 (8) "Dental auxiliary personnel" or "auxiliary" means
34 dental hygienists and dental assistants who assist the dentist in
35 the provision of oral health care services to patients.

36 (9) "Dental hygienist" means a person licensed by the board
37 who provides preventative oral health care services to patients
38 in the dental office: *Provided*, That no occupational title other
39 than dental hygienist may be used to describe this auxiliary.

40 (10) "Dental laboratory" means a dental laboratory as
41 defined in section one, article four-b of this chapter.

42 (11) "Dental office" means the place where the licensed
43 dentist and dental auxiliary personnel are practicing dentistry.

44 (12) "Dental prosthesis" means an artificial appliance
45 fabricated to replace one or more teeth or other oral or peri-oral
46 structure in order to restore or alter function or aesthetics.

47 (13) "Dentist" means an individual licensed by the board to
48 practice dentistry.

49 (14) "Dentistry" means the evaluation, diagnosis, preven-
50 tion and treatment of diseases, disorders and conditions of the
51 oral cavity, maxillofacial area and the adjacent and associated
52 structures provided by a dentist.

53 (15) "Direct supervision" means supervision of dental
54 auxiliary personnel provided by a licensed dentist who is
55 physically present in the dental office.

56 (16) "Good moral character" means a lack of history of
57 dishonesty.

58 (17) "License" means a license to practice dentistry or
59 dental hygiene.

60 (18) "Licensee" means a person holding a license.

61 (19) "Specialty" means the practice of a certain branch of
62 dentistry.

§30-4-4. Board of dental examiners.

1 (a) The "West Virginia Board of Dental Examiners" is
2 hereby continued. The members of the board in office on the

3 date this section takes effect shall, unless sooner removed,
4 continue to serve until their respective terms expire and until
5 their successors have been appointed and qualified.

6 (b)(1) Commencing with the board terms beginning the first
7 day of July, two thousand one, the board shall consist of nine
8 members appointed for terms of five years by the governor with
9 the advice and consent of the Senate. Six members must be
10 licensed dentists, one member must be a licensed dental
11 hygienist, one member must be a nationally certified dental
12 assistant and one member must be a citizen member who is not
13 licensed under the provisions of this article and who is not a
14 dental assistant or a person who performs any services related
15 to the practice of dentistry.

16 (2) Each licensed or certified member of the board, at the
17 time of his or her appointment, must have held a license in this
18 state or have been nationally certified for a period of not less
19 than five years immediately preceding the appointment and
20 each member must be a resident of this state during the appoint-
21 ment term.

22 (3) No person connected with a commercial entity that may
23 derive financial gain from the profession of dentistry and no
24 person connected with a dental college, school or dental
25 department of a university is eligible for appointment to the
26 board.

27 (4) Each appointment of a licensed dentist, whether for a
28 full term or to fill a vacancy, shall be made by the governor
29 from among three nominees selected by the West Virginia
30 dental association; each appointment of a licensed dental
31 hygienist, whether for a full term or to fill a vacancy, shall be
32 made by the governor from among three nominees selected by
33 the West Virginia dental hygienists' association; and each
34 appointment of a dental assistant, whether for a full term or to

35 fill a vacancy, shall be made by the governor from among three
36 nominees selected by the West Virginia dental assistants'
37 association. If the appointment is for a full term, the nomina-
38 tions must be submitted to the governor not later than eight
39 months prior to the date on which the appointment becomes
40 effective. If the appointment is to fill a vacancy, the nomina-
41 tions must be submitted to the governor within thirty days after
42 a request for the nominations have been made by the governor
43 to the president of the West Virginia dental association,
44 president of the West Virginia dental hygienists' association or
45 president of the West Virginia dental assistants' association. If
46 the association fails to submit to the governor nominations for
47 an appointment in accordance with the requirements of this
48 section, the governor may make the appointment without the
49 nominations.

50 (c) No member may serve more than two consecutive full
51 terms and any member having served two full terms may not be
52 appointed for one year after completion of his or her second full
53 term. A member shall continue to serve until his or her succes-
54 sor has been appointed and qualified.

55 (d) The governor may remove any member from the board
56 for neglect of duty, incompetency or official misconduct.

57 (e) Any member of the board immediately and automati-
58 cally forfeits his or her membership if he or she has his or her
59 license to practice dentistry or dental hygiene suspended or
60 revoked by the board, is convicted of a felony under the laws of
61 any state or the United States or becomes a nonresident of this
62 state.

63 (f) Each member of the board shall receive compensation
64 and expense reimbursement in accordance with section eleven,
65 article one of this chapter.

§30-4-5. Powers of the board.

1 The board has all the powers set forth in article one of this
2 chapter and in addition may:

3 (1) Sue and be sued in its official name as an agency of this
4 state;

5 (2) Hire, fix the compensation of and discharge the employ-
6 ees necessary to enforce the provisions of this article;

7 (3) Examine and determine the qualifications of any
8 applicant for a license;

9 (4) Examine and determine the qualifications of any
10 applicant for a certificate of qualification;

11 (5) Issue, renew, deny, suspend, revoke or reinstate licenses
12 and discipline licensees;

13 (6) Issue, renew, deny, suspend, revoke or reinstate
14 certificates of qualification and discipline holders of a certifi-
15 cate of qualification;

16 (7) Investigate alleged violations of the provisions of this
17 article and article four-b of this chapter, reasonable regulations
18 promulgated hereunder and orders and final decisions of the
19 board;

20 (8) Conduct hearings upon charges calling for discipline of
21 a licensee or revocation or suspension of a license;

22 (9) Propose rules in accordance with the provisions of
23 article three, chapter twenty-nine-a of this code to implement
24 the provisions of this article; and

25 (10) Take all other actions necessary and proper to effectu-
26 ate the purposes of this article.

§30-4-6. Rule-making authority.

1 (a) The board shall propose rules for legislative approval in
2 accordance with the provisions of article three, chapter
3 twenty-nine-a of this code to implement the provisions of this
4 article including, but not limited to, the following:

5 (1) The examinations administered under this article;

6 (2) Issuing and renewing a license;

7 (3) Issuing temporary permits, teaching permits and dental
8 intern or resident permits;

9 (4) Specialities that a dentist may practice;

10 (5) Issuing and renewing a certificate of qualification;

11 (6) Denying, suspending, revoking, reinstating or limiting
12 the practice of a licensee or certificate of qualification;

13 (7) Continuing education requirements for licensees;

14 (8) Delegated procedures to be performed by a dental
15 hygienist;

16 (9) Delegated procedures to be performed by a dental
17 assistant;

18 (10) Use of firm or trade names;

19 (11) Dental corporations; and

20 (12) Professional conduct requirements.

21 (b) All rules in effect on the effective date of this article
22 shall remain in effect until they are withdrawn, revoked or
23 amended.

§30-4-7. Fees; special revenue account; administrative fines.

1 (a) All fees and other moneys, except administrative fines,
2 received by the board shall be deposited in a separate special
3 revenue fund in the state treasury and be used for the adminis-
4 tration of this article. Except as may be provided in section
5 eleven, article one of this chapter, the board shall retain the
6 amounts in the special revenue account from year to year. No
7 compensation or expense incurred under this article is a charge
8 against the general revenue fund.

9 (b) Any amounts received as administrative fines imposed
10 pursuant to this article shall be deposited into the general
11 revenue fund of the state treasury.

§30-4-8. License requirements; dentists.

1 (a) The board shall issue a license to practice dentistry to an
2 applicant who meets the following requirements:

3 (1) Is at least eighteen years of age;

4 (2) Is of good moral character;

5 (3) Is a graduate of and has a diploma from an approved
6 dental college, school or dental department of a university;

7 (4) Has passed an examination that tests the applicant's
8 knowledge of subjects specified by the board by rule: *Provided,*
9 That the board may recognize a certificate granted by the
10 national board of dental examiners in lieu of the examination or
11 part of the examination that the board requires;

12 (5) Has not been found guilty of cheating, deception or
13 fraud in the examination or any part of the application; and

14 (6) Has paid the application fee specified by rule.

15 (b) A license to practice dentistry issued by the board prior
16 to the first day of February, two thousand one, shall for all
17 purposes be considered a license issued under this section:
18 *Provided*, That a person holding a license issued prior to the
19 first day of February, two thousand one, must renew the license
20 pursuant to section twelve of this article.

**§30-4-9. Dentist from another state; license to practice dentistry
in this state.**

1 The board may issue a license to practice dentistry to an
2 applicant of good moral character who holds a valid license to
3 practice dentistry from another state if the applicant demon-
4 strates that:

5 (1) He or she holds a license to practice dentistry in another
6 state which was granted after completion of educational
7 requirements substantially equivalent to those required in this
8 state;

9 (2) He or she holds a license to practice dentistry in another
10 state which was granted after passing, in that or another state,
11 an examination that is substantially equivalent to the examina-
12 tion required in this state;

13 (3) He or she is not currently being investigated by a
14 disciplinary authority of another state, does not have charges
15 pending against his or her license to practice dentistry and has
16 never had a license to practice dentistry revoked;

17 (4) He or she has not previously failed an examination for
18 licensure as a dentist in this state; and

19 (5) He or she has paid the application fee specified by rule.

§30-4-10. License requirements; dental hygienist.

1 (a) The board shall issue a dental hygienist license to an
2 applicant who meets the following requirements:

3 (1) Is at least eighteen years of age;

4 (2) Is of good moral character;

5 (3) Is a graduate with a degree in dental hygiene from an
6 approved dental hygiene program of a college, school or dental
7 department of a university;

8 (4) Has passed the national board dental hygiene examina-
9 tion, a regional or state clinical examination and a state law
10 examination that tests the applicant's knowledge of subjects
11 specified by the board by rule;

12 (5) Has not been found guilty of cheating, deception or
13 fraud in the examination or any part of the application; and

14 (6) Has paid the application fee specified by rule.

15 (b) A dental hygienist license issued by the board prior to
16 the first day of February, two thousand one, shall for all
17 purposes be considered a dental hygienist license issued under
18 this section: *Provided*, That a person holding a dental hygienist
19 license issued prior to the first day of February, two thousand
20 one, must renew the license pursuant to section twelve of this
21 article.

**§30-4-11. Dental hygienist from another state; license to practice
dental hygiene in this state.**

1 The board may issue a dental hygiene license to an appli-
2 cant who holds a valid dental hygiene license from another state
3 if the applicant demonstrates that:

4 (1) He or she holds a dental hygiene license in another state
5 which was granted after completion of educational require-
6 ments substantially equivalent to those required in this state;

7 (2) He or she holds a dental hygiene license in another state
8 which was granted after passing, in that or another state, an
9 examination that is substantially equivalent to the examination
10 required in this state;

11 (3) He or she is not currently being investigated by a
12 disciplinary authority of another state, does not have charges
13 pending against his or her dental hygiene license and has never
14 had a dental hygiene license revoked;

15 (4) He or she has not previously failed an examination for
16 licensure as a dental hygienist in this state; and

17 (5) He or she has paid the application fee specified by rule.

§30-4-12. License renewal; conditions of renewal.

1 (a) The board shall renew a license to practice dentistry or
2 dental hygiene for a one-year period after its issue in accor-
3 dance with procedures specified by rule.

4 (b) The board shall charge a fee for each renewal of a
5 license to practice dentistry or dental hygiene in amounts
6 specified by rule.

7 (c) The board shall require as a condition for the renewal of
8 a license to practice dentistry or dental hygiene that each dentist
9 and dental hygienist participate in continuing professional
10 education in accordance with the requirements specified by
11 rule.

**§30-4-13. Temporary permits; dental intern or resident permit;
teaching permit; dentist.**

1 (a) The board shall issue a temporary permit to practice
2 dentistry to an applicant who:

3 (1) Has graduated from an approved dental college, school
4 or dental department of a university with a degree in dentistry;

5 (2) Has been offered employment under the direct supervi-
6 sion of a licensed dentist;

7 (3) Has not taken the examination required to be granted a
8 license to practice dentistry;

9 (4) Has paid the application fee specified by rule; and

10 (5) Meets the other qualifications specified by rule by the
11 board.

12 (b) A temporary permit to practice dentistry may not be
13 renewed and expires on the earlier of:

14 (1) The date the dentist ceases to be under the direct
15 supervision of a licensed dentist; or

16 (2) Sixty days after the date that the first examination
17 required by rule for a license to practice dentistry is adminis-
18 tered.

19 (c) The board shall issue a dental intern or dental resident
20 permit to an applicant who meets the qualifications set forth in
21 subdivisions one, three, four and five of subsection (a) of this
22 section and who has been accepted as a dental intern or dental
23 resident by a licensed hospital or dental school in this state
24 which maintains an established dental department under the
25 supervision of a licensed dentist.

26 (d) The dental intern or dental resident permit may not be
27 renewed and expires on the earlier of:

28 (1) The date the permit holder ceases to be a dental intern
29 or dental resident; or

30 (2) One year after the date of issue.

31 (e) The board shall issue a teaching permit to an applicant
32 who meets the qualifications set forth in subdivisions one,
33 three, four and five, subsection (a) of this section and who has
34 been certified by the dean of a dental school located in this state
35 to be a member of the teaching staff of the dental school.

36 (f) A teaching permit is valid for one year from the date of
37 issue and may be renewed.

38 (g) While in effect, a temporary permit to practice dentistry,
39 a permit to practice as a dental intern or dental resident and a
40 teaching permit are subject to the restrictions and requirements
41 imposed by this article. In addition, the holder of a permit to
42 practice as a dental intern or dental resident may not receive
43 any fee for service other than a salary paid by the hospital or
44 dental school and the holder of a teaching permit may only
45 practice dentistry within the facilities of the dental school.

§30-4-14. Temporary permits; teaching permit; dental hygienist.

1 (a) The board may issue a temporary permit to practice
2 dental hygiene to an applicant who:

3 (1) Has graduated from an approved dental hygiene
4 program of a college, school or dental department of a univer-
5 sity with a degree in dental hygiene;

6 (2) Has been offered employment as a dental hygienist;

7 (3) Has not taken the examination required to be granted a
8 dental hygiene license;

9 (4) Has paid the application fee specified by rule; and

10 (5) Meets the other qualifications specified by rule by the
11 board.

12 (b) A temporary permit to practice dental hygiene shall not
13 be renewed and expires on the earlier of:

14 (1) The date the dental hygienist ceases to be employed; or

15 (2) Sixty days after the date that the first dental hygiene
16 examination required by rule for a dental hygiene license is
17 administered.

18 (c) The board may issue a teaching permit to an applicant
19 who meets the qualifications set forth in subdivisions one,
20 three, four and five, subsection (a) of this section and who has
21 been certified by the dean of a dental school located in this state
22 to be a member of the teaching staff of the dental school.

23 (d) A teaching permit is valid for one year from the date of
24 issue and may be renewed.

25 (e) While in effect, a temporary permit to practice dental
26 hygiene and a teaching permit are subject to the restrictions and
27 requirements imposed by this article. In addition, the holder of
28 a teaching permit may only practice dental hygiene within the
29 facilities of the dental school.

§30-4-15. Scope of practice; dentist.

1 The practice of dentistry includes the following:

2 (1) Coordinating dental services to meet the oral health
3 needs of the patient;

4 (2) Examining, evaluating and diagnosing diseases,
5 disorders and conditions of the oral cavity, maxillofacial area
6 and adjacent and associated structures;

7 (3) Treating diseases, disorders and conditions of the oral
8 cavity, maxillofacial area and the adjacent and associated
9 structures;

10 (4) Providing services to prevent diseases, disorders and
11 conditions of the oral cavity, maxillofacial area and the adjacent
12 and associated structures;

13 (5) Fabricating, repairing or altering a dental prosthesis;

14 (6) Administering general anesthesia and parenteral
15 conscious sedation in accordance with the provisions of article
16 four-a of this chapter;

17 (7) Prescribing drugs necessary for the practice of dentistry;

18 (8) Executing and signing a death certificate when it is
19 required in the practice of dentistry;

20 (9) Employing and supervising dental auxiliary personnel;

21 (10) Authorizing delegated procedures to be performed by
22 dental auxiliary personnel; and

23 (11) Performing any other work included in the curriculum
24 of an approved dental school, college or dental department of
25 a university.

§30-4-16. Specialties; dentist.

1 (a) The board shall by rule define specialties in which a
2 dentist may practice.

3 (b) A dentist may not represent to the public that he or she
4 is a specialist in any branch of dentistry or limit his or her
5 practice to any branch of dentistry unless first issued a certifi-
6 cate of qualification in that branch of dentistry by the board.

7 (c) The board shall by rule establish the qualifications and
8 examination requirements for a dentist who desires to practice
9 a specialty.

10 (1) The board may appoint not more than three specialists
11 to examine the credentials of applicants for a certificate of
12 qualification and each appointed specialist shall be paid a fee
13 set by rule by the board.

14 (2) The board may appoint not more than three specialists
15 to administer and grade the examination given to applicants for
16 a certificate of qualification and each appointed specialist shall
17 be paid a fee set by rule by the board.

18 (d) The board shall by rule establish the application
19 procedure and fee for issuance of a certificate of qualification.

§30-4-17. Scope of practice; dental hygienist.

1 The practice of dental hygiene includes the following:

2 (1) Performing a complete prophylaxis, including the
3 removal of any deposit, accretion or stain from the surface of a
4 tooth or a restoration;

5 (2) Applying a medicinal agent to a tooth for a prophylactic
6 purpose;

7 (3) Taking a dental X-ray;

8 (4) Instructing a patient on proper oral hygiene practice;

9 (5) Performing all delegated procedure of a dental hygienist
10 specified by rule by the board; and

11 (6) Performing all delegated procedures of a dental assistant
12 specified by rule by the board.

§30-4-18. Scope of practice; dental assistant.

1 A dental assistant may perform only those delegated
2 procedures specified by rule by the board.

§30-4-19. Notification; changing dental office; adding dental office.

1 (a) Every licensed dentist within thirty days of changing his
2 or her place of practice or establishing a practice at an addi-
3 tional dental office shall furnish the board with the address of
4 the new or additional dental office.

5 (b) Every licensed dental hygienist within thirty days of
6 changing his or her place of employment or establishing
7 employment at additional dental office shall furnish the board
8 with the name and address of the new or additional employers.

§30-4-20. Refusal to issue or renew, suspension or revocation of license; disciplinary action.

1 (a) The board may refuse to issue, refuse to renew, suspend,
2 revoke or limit any license or practice privilege of a licensee
3 and may take disciplinary action against a licensee who, after
4 hearing, has been adjudged by the board as unqualified for any
5 of the following reasons:

6 (1) The presentation to the board of any diploma, license or
7 certificate illegally or fraudulently obtained, or one obtained
8 from an institution which is not reputable, or one obtained from
9 an unrecognized or irregular institution or state board;

10 (2) Suspension or revocation of a license issued by another
11 state or territory on grounds which would be the basis of
12 discipline in this state;

13 (3) Incompetent, negligent or willful misconduct in the
14 practice of dentistry or dental hygiene, which shall include the
15 departure from, or the failure to conform to, the minimal
16 standards of acceptable and prevailing dental or dental hygiene
17 practice in their area of expertise as shall be determined by the
18 board. The board need not establish actual injury to the patient
19 in order to adjudge a licensee guilty of this conduct;

20 (4) Engaging in conduct that indicates a lack of knowledge
21 of, an inability to apply or the negligent application of princi-
22 ples or skills of dentistry or dental hygiene;

23 (5) Being guilty of gross ignorance or gross inefficiency in
24 his or her profession;

25 (6) Being convicted of a felony; and a certified copy of the
26 record of the court of conviction shall be sufficient proof of
27 conviction;

28 (7) Announcing or otherwise holding himself or herself out
29 to the public as a specialist or as being specially qualified in
30 any particular branch of dentistry or as giving special attention
31 to any branch of dentistry or as limiting his or her practice to
32 any branch of dentistry without first complying with the
33 requirements established by the board for the specialty and
34 having been issued a certificate of qualification in the specialty
35 by the board; or

36 (8) Being guilty of unprofessional conduct as contained in
37 the American dental association principles of ethics and code of
38 professional conduct. The following acts or any of them are
39 conclusively presumed to be unprofessional conduct:

- 40 (A) Being guilty of any fraud or deception;
- 41 (B) Committing a criminal operation or being convicted of
42 a crime involving moral turpitude;
- 43 (C) Abusing alcohol or drugs;
- 44 (D) Violating any professional confidence or disclosing any
45 professional secret;
- 46 (E) Being grossly immoral;
- 47 (F) Employing what are known as “cappers” or “steerers”
48 to obtain business;
- 49 (G) Obtaining any fee by fraud or misrepresentation;
- 50 (H) Employing directly or indirectly, or directing or
51 permitting any suspended or unlicensed person so employed, to
52 perform operations of any kind or to treat lesions of the human
53 teeth or jaws or correct malimposed formations thereof;
- 54 (I) Practicing, or offering, or undertaking to practice
55 dentistry under any firm name or trade name not approved by
56 the board;
- 57 (J) Having a professional connection or association with, or
58 lending his or her name to another, for the illegal practice of
59 dentistry, or professional connection or association with any
60 person, firm or corporation holding himself, themselves or itself
61 out in any manner contrary to this article;
- 62 (K) Making use of any advertising relating to the use of any
63 drug or medicine of unknown formula;
- 64 (L) Advertising to practice dentistry or perform any
65 operation thereunder without causing pain;

66 (M) Advertising professional superiority or the perfor-
67 mance of professional services in a superior manner;

68 (N) Advertising to guarantee any dental service;

69 (O) Advertising in any manner that is false or misleading in
70 any material respect;

71 (P) Soliciting subscriptions from individuals within or
72 without the state for, or advertising or offering to individuals
73 within or without the state, a course or instruction or course
74 materials in any phase, part or branch of dentistry or dental
75 hygiene in any journal, newspaper, magazine or dental publica-
76 tion, or by means of radio, television or United States mail, or
77 in or by any other means of contacting individuals: *Provided,*
78 That the provisions of this paragraph may not be construed so
79 as to prohibit: (i) An individual dentist or dental hygienist from
80 presenting articles pertaining to procedures or technique to state
81 or national journals or accepted dental publications; or (ii)
82 educational institutions approved by the board from offering
83 courses or instruction or course materials to individual dentists
84 and dental hygienists from within or without the state; or

85 (Q) Engaging in any action or conduct which would have
86 warranted the denial of the license.

87 (b) The term advertising, as used in this section, shall be
88 construed to include any type of public media.

89 (c) Disciplinary action includes, but is not limited to, a
90 reprimand, censure, probation, administrative fine not to exceed
91 one thousand dollars per day per violation and mandatory
92 attendance at continuing professional education seminars.

93 (d) This entire section is passed in the interest of the public
94 health, safety and welfare and its provisions must be liberally
95 construed to carry out its object and purpose.

§30-4-21. Complaints; investigations.

1 (a) Upon receipt of a written complaint filed against any
2 dentist or dental hygienist, the board shall provide a copy of the
3 complaint to the dentist or dental hygienist.

4 (b) The board may investigate the complaint. If the board
5 finds upon investigation that probable cause exists that the
6 dentist or dental hygienist has violated any provision of this
7 article or the rules, the board shall serve the dentist or dental
8 hygienist with a written statement of charges and a notice
9 specifying the date, time and place of hearing. The hearing shall
10 be held in accordance with section twenty-two of this article.

§30-4-22. Hearing and judicial review.

1 (a) A hearing on a statement of charges shall be held in
2 accordance with the provisions for hearing set forth in section
3 eight, article one of this chapter and procedures specified by
4 rule by the board by rule.

5 (b) Any dentist or dental hygienist adversely affected by
6 any decision of the board entered after a hearing may obtain
7 judicial review of the decision in accordance with section four,
8 article five, chapter twenty-nine-a of this code and may appeal
9 any ruling resulting from judicial review in accordance with
10 article five, chapter twenty-nine-a of this code.

§30-4-23. Reinstatement.

1 Any dentist or dental hygienist against whom disciplinary
2 action has been taken under the provisions of this article shall
3 be afforded an opportunity to demonstrate the qualifications to
4 resume practice. The application for reinstatement shall be in
5 writing and subject to the procedures specified by the board by
6 rule.

§30-4-24. Unlawful acts.

1 It is unlawful for any person not licensed under the
2 provisions of this article to practice dentistry or dental hygiene
3 in this state.

§30-4-25. Injunctions.

1 When, as a result of an investigation under section twenty-
2 one of this article or otherwise, the board or any other interested
3 person believes that any person has engaged, is engaging or is
4 about to engage in the practice of dentistry or dental hygiene
5 without a license, the board or any other interested person may
6 make application to any court of competent jurisdiction for an
7 order enjoining the acts or practices and upon a showing that
8 the person has engaged or is about to engage in any act or
9 practice, an injunction, restraining order or another appropriate
10 order may be granted by the court without bond.

§30-4-26. Criminal proceedings; penalties.

1 (a) When, by reason of an investigation under section
2 twenty-one of this article or otherwise, the board has reason to
3 believe that any person has knowingly violated section twenty-
4 four of this article, the board may bring its information to the
5 attention of the attorney general or other appropriate
6 law-enforcement officer who may cause appropriate criminal
7 proceedings to be brought.

8 (b) Any person who knowingly violates any provision of
9 section twenty-four of this article is guilty of a misdemeanor
10 and, upon conviction thereof, shall be fined not more than two
11 thousand five hundred dollars or confined in the county or
12 regional jail not more than one year, or both fined and impris-
13 oned.

§30-4-27. Single act evidence of practice.

1 In any action brought under section twenty-five of this
2 article or any proceeding initiated under section twenty-six of
3 this article, evidence of the commission of a single act prohib-
4 ited by this article is sufficient to justify a penalty, injunction,
5 restraining order or conviction without evidence of a general
6 course of conduct.

§30-4-28. Dental corporations.

1 (a) All dental corporations created prior to the first day of
2 July, two thousand one, are hereby continued.

3 (b) On or after the first day of July, two thousand one, one
4 or more dentists may organize and become a shareholder or
5 shareholders of a dental corporation domiciled within this state
6 under the terms and conditions and subject to the limitations
7 and restrictions specified by rule.

8 (c) No corporation may practice dentistry, or any of its
9 branches, or hold itself out as being capable of doing so without
10 a certificate of authorization from the board.

11 (d) When the secretary of state receives a certificate of
12 authorization to act as a dental corporation from the board, he
13 or she shall attach the authorization to the corporation applica-
14 tion and, upon compliance with the applicable provisions of
15 chapter thirty-one of this code, the secretary of state shall issue
16 to the incorporators a certificate of incorporation for the dental
17 corporation.

18 (e) A corporation holding a certificate of authorization must
19 register annually, on or before the thirtieth day of June, on a
20 form prescribed by the board and pay an annual registration fee
21 in an amount specified by rule.

22 (f) A dental corporation may practice dentistry only through
23 an individual dentist or dentists duly licensed to practice

24 dentistry in this state, but the dentist or dentists may be employ-
25 ees rather than shareholders of the corporation.

26 (g) A dental corporation holding a certificate of authoriza-
27 tion shall cease to engage in the practice of dentistry upon being
28 notified by the board that any of its shareholders is no longer a
29 duly licensed dentist or when any shares of the corporation have
30 been sold or disposed of to a person who is not a duly licensed
31 dentist: *Provided*, That the personal representative of a de-
32 ceased shareholder has a period, not to exceed twelve months
33 from the date of the shareholder's death, to dispose of the
34 shares; but nothing contained herein may be construed as
35 affecting the existence of the corporation or its right to continue
36 to operate for all lawful purposes other than the practice of
37 dentistry.

§30-4-29. Inapplicability of article.

1 The provisions of this article do not apply to:

2 (1) A duly licensed physician or surgeon in the practice of
3 his or her profession when rendering dental relief in emergency
4 cases, unless he or she undertakes to reproduce or reproduces
5 lost parts of the human teeth or to restore or replace lost or
6 missing teeth in the human mouth;

7 (2) A dental laboratory in the performance of dental
8 laboratory services as that term is defined in section one, article
9 four-b of this chapter while the dental laboratory, in the
10 performance of the work, conforms in all respects to the
11 requirements of article four-b and further does not apply to
12 persons performing dental laboratory services under the direct
13 supervision of a licensed dentist or under the direct supervision
14 of a person authorized under this article to perform any of the
15 acts in this article defined to constitute the practice of dentistry
16 while the work is performed in connection with, and as a part

17 of, the dental practice of the licensed dentist or other authorized
18 person and for his or her dental patients;

19 (3) Students enrolled in and regularly attending any dental
20 college recognized by the state board of dental examiners,
21 provided their acts are done in the dental college and under the
22 direct and personal supervision of their instructor;

23 (4) Licensed or registered dentists of another state tempo-
24 rarily operating a clinic under the auspices of a duly organized
25 and reputable dental college or reputable dental society, or to
26 one lecturing before a reputable society composed exclusively
27 of dentists; or

28 (5) The practice of dentistry by dentists whose practice is
29 confined exclusively to the service of the United States army,
30 the United States navy, the United States public health service,
31 the United States veteran's bureau or any other authorized
32 United States government agency or bureau.

§30-4-30. Termination date.

1 The board shall terminate on the first day of July, two
2 thousand three, pursuant to the provisions of article ten, chapter
3 four of this code.

ARTICLE 4B. DENTAL LABORATORY SERVICES.

§30-4B-1. Definitions.

§30-4B-2. Work authorization required; contents; retention.

§30-4B-3. Denture identification.

§30-4B-4. Review of dental laboratory services.

§30-4B-5. Unlawful acts.

§30-4B-6. Injunction against unlawful acts.

§30-4B-7. Criminal proceedings; penalties.

§30-4B-8. Single act evidence of practice.

§30-4B-1. Definitions.

1 As used in this article, the following words and terms have
2 the following meanings, unless the context clearly indicates
3 otherwise.

4 (1) "Board" means the West Virginia board of dental
5 examiners;

6 (2) "Dental laboratory" means a business performing dental
7 laboratory services: *Provided*, That there is excluded from the
8 definition dentists and other dental practitioners performing
9 dental laboratory services and persons performing dental
10 laboratory services under the direct supervision of a dentist or
11 other dental practitioner in cases where dental laboratory
12 services are performed in connection with, and as a part of, the
13 dental practice of the dentist or other dental practitioner and for
14 his or her dental patients;

15 (3) "Dental prosthesis" means an artificial appliance
16 fabricated to replace one or more teeth or other oral or peri-oral
17 structure in order to restore or alter function and aesthetics;

18 (4) "Dental laboratory service" means the fabricating,
19 repairing or altering of any dental prosthesis;

20 (5) "Dental laboratory technician" means a person qualified
21 by education, training and experience who has completed a
22 dental laboratory technology education program and who
23 fabricates, repairs or alters a dental prosthesis in accordance
24 with a dentist's work authorization;

25 (6) "Dentist" means a dentist licensed pursuant to the
26 provisions of article four of this chapter;

27 (7) "Other dental practitioner" means those persons
28 excluded from the definition of the practice of dentistry under
29 the provisions of subsections three, four and five, section
30 twenty-nine, article four of this chapter and also those persons

31 who hold temporary permits to practice dentistry or teaching
32 permits which have been issued to them under the provisions of
33 section fourteen, article four of this chapter; and

34 (8) "Work authorization" means a written order for dental
35 laboratory services which has been issued by a licensed dentist
36 or other dental practitioner.

§30-4B-2. Work authorization required; contents; retention.

1 (a) No dental laboratory technician may perform any dental
2 laboratory service without the issuance of a work authorization
3 by a dentist or other dental practitioner.

4 (b) Each work authorization must contain the following
5 information: (1) The name and address of the dental laboratory
6 to which it is directed; (2) the case identification; (3) a specifi-
7 cation of the materials to be used; (4) a description of the work
8 to be done and, if necessary, diagrams thereof; (5) the date of
9 issue; and (6) the signature and address of the dentist or other
10 dental practitioner issuing the work authorization. A separate
11 work authorization must be issued for each patient of the dentist
12 or other dental practitioner for whom a dental laboratory service
13 is to be performed.

14 (c) Every work authorization must be made in duplicate
15 with the original being delivered to the dental laboratory to
16 which it is directed and the copy being retained in the office of
17 the issuing dentist or other dental practitioner. A work authori-
18 zation must be saved for a period of two years from its date of
19 issue.

§30-4B-3. Denture identification.

1 Every dental laboratory and every dentist who engages in
2 dental laboratory services and who fabricates any full upper or
3 full lower set of prosthetic dentures must affix upon the

4 dentures, in a nonremovable manner, the name of the patient for
5 whom the dentures are made and the initials of the dentist's
6 state of practice and license identification number.

§30-4B-4. Review of dental laboratory services.

1 The board may review the dental laboratory services of a
2 dental laboratory on a random and general basis without any
3 requirement of a formal complaint or suspicion of impropriety.

§30-4B-5. Unlawful acts.

1 (a) It is unlawful for any dental laboratory either directly or
2 indirectly: (1) To advertise that it is engaged in the business of
3 performing dental laboratory services; (2) to advertise it
4 performs dental laboratory services for members of the public;
5 (3) to advertise a price for the performance of dental laboratory
6 services; or (4) to advertise techniques used or materials
7 employed by it in the performance of dental laboratory services:
8 *Provided*, That this subsection does not prevent dental laborato-
9 ries from advertising in dental journals or in other professional
10 dental publications or from communicating directly to a dentist
11 and other dental practitioner or from listing the dental labora-
12 tory in business and telephone directories if the business and
13 telephone directory announcements are limited to name, address
14 and telephone number and do not occupy more than the number
15 of lines necessary to disclose the information, or from display-
16 ing the trade name and address of the dental laboratory on the
17 door of its place of business or on name plates or door plates
18 exhibited on the interior or exterior of the place of business.

19 (b) It is unlawful for any person, other than a dentist or
20 other dental practitioner, to sell, offer for sale or furnish any
21 dental prosthesis or other dental laboratory service to any
22 person who is not a dentist or other dental practitioner.

23 (c) It is unlawful for any person to perform dental labora-
24 tory services without a work authorization: *Provided*, That this
25 subsection does not apply to a dentist or other dental practitio-
26 ner, or to their employees working under their direct supervi-
27 sion, performing dental laboratory services as a part of their
28 own dental practice and for their own dental patients.

29 (d) It is unlawful for any dental laboratory to perform any
30 dental laboratory service without the issuance of a work
31 authorization by a dentist or other dental practitioner.

32 (e) It is unlawful for any dental laboratory or dentist who
33 fabricates a full upper or full lower set of prosthetic dentures
34 not to affix upon the dentures, in a nonremovable manner, the
35 name of the patient, the initials of the dentist's state of practice
36 and license identification.

§30-4B-6. Injunction against unlawful acts.

1 When, as a result of a review under section four of this
2 article or otherwise, the board or any other interested person
3 believes that any person engaged, is engaging or is about to
4 engage in any act or practice that violates the provisions of
5 section five of this article, the board or any other interested
6 person may make application to any court of competent
7 jurisdiction for an order enjoining the acts or practices and upon
8 a showing that the person has violated or is about to violate the
9 provisions of this article, an injunction, restraining order or
10 another appropriate order may be granted by the court without
11 bond.

§30-4B-7. Criminal proceedings; penalties.

1 (a) When, by reason of a review under section four of this
 2 article or otherwise, the board has reason to believe that any
 3 person has knowingly engaged in an act or practice that
 4 constitutes a violation of section five of this article, the board
 5 may bring its information to the attention of the attorney
 6 general or other appropriate law-enforcement officer who may
 7 cause appropriate criminal proceedings to be brought.

8 (b) Any person or firm who knowingly violates any
 9 provision of section five of this article is guilty of a misde-
 10 meanor and, upon conviction thereof, shall be fined not more
 11 than one thousand dollars or confined in the county or regional
 12 jail not more than one year or both fined and imprisoned.

§30-4B-8. Single act evidence of practice.

1 In any action or proceeding brought under section five or
 2 six of this article, evidence of the commission of a single act
 3 prohibited by this article is sufficient to justify an injunction,
 4 restraining order or conviction without evidence of a general
 5 course of conduct.

CHAPTER 229

(Com. Sub. for H. B. 3052 — By Delegates Border and Perdue)

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one-b, three and twelve-b,
 article five, chapter thirty of the code of West Virginia, one
 thousand nine hundred thirty-one, as amended; and to further

amend said article by adding thereto two new sections, designated sections five-b and sixteen-a, relating generally to pharmacies; codifying procedure to dispense prescribed substances more than one year after issuance of the prescription by internet pharmacies; providing for indirect supervision of registered pharmacy technicians during pharmacist's break; providing for maximum break period in which a registered pharmacy technician may be indirectly supervised; limiting the physical area a pharmacist may take a break; providing for certain functions a registered pharmacy technician may perform while being indirectly supervised; requiring certain communication vehicles be implemented between a registered pharmacy technician and a pharmacist while on break; providing for certain protocols to be established by individual pharmacies in the event of an emergency while a pharmacist is on break; redefining practitioner as it affects pharmacists; deleting obsolete definition; and prohibiting the dispensing of prescription orders in absence of practitioner-patient relationship.

Be it enacted by the Legislature of West Virginia:

That sections one-b, three and twelve-b, article five, 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 two new sections, designated sections five-b and sixteen-a, all to read as follows:

ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS AND PHARMACIES.

§30-5-1b. Definitions.

§30-5-3. When licensed pharmacist required; person not licensed pharmacist, pharmacy technician or licensed intern not to compound prescriptions or dispense poisons or narcotics; licensure of interns; prohibiting the dispensing of prescription orders in absence of practitioner-patient relationship.

§30-5-5b. Indirect supervision of registered pharmacy technicians during pharmacist's break.

§30-5-12b. Definitions; selection of generic drug products; exceptions; records; labels; manufacturing standards; rules; notice of substitution; complaints; notice and hearing; immunity.

§30-5-16a. Filling of prescriptions more than one year after issuance.

§30-5-1b. Definitions.

1 The following words and phrases, as used in this article,
2 shall have the following meanings, unless the context otherwise
3 requires:

4 (a) “Administer” means the direct application of a drug to
5 the body of a patient or research subject by injection, inhalation,
6 ingestion or any other means.

7 (b) “Board of pharmacy” or “board” means the West
8 Virginia state board of pharmacy.

9 (c) “Compounding” means:

10 (1) The preparation, mixing, assembling, packaging or
11 labeling of a drug or device:

12 (A) As the result of a practitioner’s prescription drug order
13 or initiative based on the practitioner/patient/pharmacist
14 relationship in the course of professional practice for sale or
15 dispensing; or

16 (B) For the purpose of, or as an incident to, research,
17 teaching or chemical analysis and not for sale or dispensing;

18 (2) The preparation of drugs or devices in anticipation of
19 prescription drug orders based on routine, regularly observed
20 prescribing patterns.

21 (d) “Confidential information” means information main-
22 tained by the pharmacist in the patient record or which is
23 communicated to the patient as part of patient counseling or

24 which is communicated by the patient to the pharmacist. This
25 information is privileged and may be released only to the
26 patient or to other members of the health care team and other
27 pharmacists where, in the pharmacist's professional judgment,
28 the release is necessary to the patient's health and well-being;
29 to other persons or governmental agencies authorized by law to
30 receive the privileged information; as necessary for the limited
31 purpose of peer review and utilization review; as authorized by
32 the patient or required by court order.

33 (e) "Deliver" or "delivery" means the actual, constructive
34 or attempted transfer of a drug or device from one person to
35 another, whether or not for a consideration.

36 (f) "Device" means an instrument, apparatus, implement or
37 machine, contrivance, implant or other similar or related article,
38 including any component part or accessory, which is required
39 under federal law to bear the label, "Caution: Federal or state
40 law requires dispensing by or on the order of a physician."

41 (g) "Dispense" or "dispensing" means the preparation and
42 delivery of a drug or device in an appropriately labeled and
43 suitable container to a patient or patient's representative or
44 surrogate pursuant to a lawful order of a practitioner for
45 subsequent administration to, or use by, a patient.

46 (h) "Distribute" means the delivery of a drug or device
47 other than by administering or dispensing.

48 (i) "Drug" means:

49 (1) Articles recognized as drugs in the USP-DI, facts and
50 comparisons, physicians desk reference or supplements thereto,
51 for use in the diagnosis, cure, mitigation, treatment or preven-
52 tion of disease in human or other animals;

53 (2) Articles, other than food, intended to affect the structure
54 or any function of the body of human or other animals; and

55 (3) Articles intended for use as a component of any articles
56 specified in subsection (1) or (2) of this section.

57 (j) "Drug regimen review" includes, but is not limited to,
58 the following activities:

59 (1) Evaluation of the prescription drug orders and patient
60 records for:

61 (A) Known allergies;

62 (B) Rational therapy-contraindications;

63 (C) Reasonable dose and route of administration; and

64 (D) Reasonable directions for use.

65 (2) Evaluation of the prescription drug orders and patient
66 records for duplication of therapy.

67 (3) Evaluation of the prescription drug for interactions
68 and/or adverse effects which may include, but are not limited
69 to, any of the following:

70 (A) Drug-drug;

71 (B) Drug-food;

72 (C) Drug-disease; and

73 (D) Adverse drug reactions.

74 (4) Evaluation of the prescription drug orders and patient
75 records for proper use, including over use and under use and
76 optimum therapeutic outcomes.

77 (k) "Intern" means an individual who is:

78 (1) Currently registered by this state to engage in the
79 practice of pharmacy while under the supervision of a licensed
80 pharmacist and is satisfactorily progressing toward meeting the
81 requirements for licensure as a pharmacist; or

82 (2) A graduate of an approved college of pharmacy or a
83 graduate who has established educational equivalency by
84 obtaining a foreign pharmacy graduate examination committee
85 (FPGEC) certificate, who is currently licensed by the board for
86 the purpose of obtaining practical experience as a requirement
87 for licensure as a pharmacist; or

88 (3) A qualified applicant awaiting examination for
89 licensure; or

90 (4) An individual participating in a residency or fellowship
91 program.

92 (l) "Labeling" means the process of preparing and affixing
93 a label to a drug container exclusive, however, of a labeling by
94 a manufacturer, packer or distributor of a nonprescription drug
95 or commercially packaged legend drug or device. Any label
96 shall include all information required by federal law or regula-
97 tion and state law or rule.

98 (m) "Mail-order pharmacy" means a pharmacy, regardless
99 of its location, which dispenses greater than ten percent
100 prescription drugs via the mail.

101 (n) "Manufacturer" means a person engaged in the manu-
102 facture of drugs or devices.

103 (o) "Manufacturing" means the production, preparation,
104 propagation or processing of a drug or device, either directly or
105 indirectly, by extraction from substances of natural origin or

106 independently by means of chemical or biological synthesis and
107 includes any packaging or repackaging of the substance(s) or
108 labeling or relabeling of its contents and the promotion and
109 marketing of the drugs or devices. Manufacturing also includes
110 the preparation and promotion of commercially available
111 products from bulk compounds for resale by pharmacies,
112 practitioners or other persons.

113 (p) "Nonprescription drug" means a drug which may be
114 sold without a prescription and which is labeled for use by the
115 consumer in accordance with the requirements of the laws and
116 rules of this state and the federal government.

117 (q) "Patient counseling" means the oral communication by
118 the pharmacist of information, as defined in the rules of the
119 board, to the patient to improve therapy by aiding in the proper
120 use of drugs and devices.

121 (r) "Person" means an individual, corporation, partnership,
122 association or any other legal entity, including government.

123 (s) "Pharmaceutical care" is the provision of drug therapy
124 and other pharmaceutical patient care services intended to
125 achieve outcomes related to the cure or prevention of a disease,
126 elimination or reduction of a patient's symptoms or arresting or
127 slowing of a disease process as defined in the rules of the board.

128 (t) "Pharmacist" or "registered pharmacist" means an
129 individual currently licensed by this state to engage in the
130 practice of pharmacy and pharmaceutical care.

131 (u) "Pharmacist-in-charge" means a pharmacist currently
132 licensed in this state who accepts responsibility for the opera-
133 tion of a pharmacy in conformance with all laws and rules
134 pertinent to the practice of pharmacy and the distribution of
135 drugs and who is personally in full and actual charge of the
136 pharmacy and personnel.

137 (v) "Pharmacy" means any drugstore, apothecary or place
138 within this state where drugs are dispensed and sold at retail or
139 displayed for sale at retail and pharmaceutical care is provided
140 and any place outside of this state where drugs are dispensed
141 and pharmaceutical care is provided to residents of this state.

142 (w) "Pharmacy technician" means registered supportive
143 personnel who work under the direct supervision of a pharma-
144 cist who have passed an approved training program as described
145 in this article.

146 (x) "Practitioner" means an individual currently licensed,
147 registered or otherwise authorized by any state, territory or
148 district of the United States to prescribe and administer drugs
149 in the course of professional practices, including allopathic and
150 osteopathic physicians, dentists, physician's assistants, optome-
151 trists, veterinarians, podiatrists and nurse practitioners as
152 allowed by law.

153 (y) "Preceptor" means an individual who is currently
154 licensed as a pharmacist by the board, meets the qualifications
155 as a preceptor under the rules of the board and participates in
156 the instructional training of pharmacy interns.

157 (z) "Prescription drug" or "legend drug" means a drug
158 which, under federal law, is required, prior to being dispensed
159 or delivered, to be labeled with either of the following state-
160 ments:

161 (1) "Caution: Federal law prohibits dispensing without
162 prescription";

163 (2) "Caution: Federal law restricts this drug to use by, or on
164 the order of, a licensed veterinarian"; or a drug which is
165 required by any applicable federal or state law or rule to be
166 dispensed pursuant only to a prescription drug order or is
167 restricted to use by practitioners only.

168 (aa) "Prescription drug order" means a lawful order of a
169 practitioner for a drug or device for a specific patient.

170 (bb) "Prospective drug use review" means a review of the
171 patient's drug therapy and prescription drug order, as defined
172 in the rules of the board, prior to dispensing the drug as part of
173 a drug regimen review.

174 (cc) "USP-DI" means the United States pharmaco-
175 peia-dispensing information.

176 (dd) "Wholesale distributor" means any person engaged in
177 wholesale distribution of drugs, including, but not limited to,
178 manufacturers' and distributors' warehouses, chain drug
179 warehouses and wholesale drug warehouses, independent
180 wholesale drug trader and retail pharmacies that conduct
181 wholesale distributions.

**§30-5-3. When licensed pharmacist required; person not licensed
pharmacist, pharmacy technician or licensed
intern not to compound prescriptions or dispense
poisons or narcotics; licensure of interns; prohibit-
ing the dispensing of prescription orders in absence
of practitioner-patient relationship.**

1 (a) It is unlawful for any person not a pharmacist, or who
2 does not employ a pharmacist, to conduct any pharmacy or
3 store for the purpose of retailing, compounding or dispensing
4 prescription drugs or prescription devices.

5 (b) It is unlawful for the proprietor of any store or phar-
6 macy to permit any person not a pharmacist to compound or
7 dispense prescriptions or prescription refills or to retail or
8 dispense the poisons and narcotic drugs named in sections two,
9 three and six, article eight, chapter sixteen of this code:
10 *Provided*, That a licensed intern may compound and dispense
11 prescriptions or prescription refills under the direct supervision

12 of a pharmacist: *Provided, however,* That registered pharmacy
13 technicians may assist in the preparation and dispensing of
14 prescriptions or prescription refills including, but not limited to,
15 reconstitution of liquid medications, typing and affixing labels
16 under the direct supervision of a licensed pharmacist.

17 (c) It is the duty of a pharmacist or employer who employs
18 an intern to license the intern with the board within ninety days
19 after employment. The board shall furnish proper forms for this
20 purpose and shall issue a certificate to the intern upon licensure.

21 (d) The experience requirement for licensure as a pharma-
22 cist shall be computed from the date certified by the supervising
23 pharmacist as the date of entering the internship. If the intern-
24 ship is not registered with the board of pharmacy, then the
25 intern shall receive no credit for such experience when he or
26 she makes application for examination for licensure as a
27 pharmacist: *Provided,* That credit may be given for such
28 unregistered experience if an appeal is made and evidence
29 produced showing experience was obtained but not registered
30 and that failure to register the internship experience was not the
31 fault of the intern.

32 (e) An intern having served part or all of his or her intern-
33 ship in a pharmacy in another state or foreign country shall be
34 given credit for the same when the affidavit of his or her
35 internship is signed by the pharmacist under whom he or she
36 served, and it shows the dates and number of hours served in
37 the internship and when the affidavit is attested by the secretary
38 of the state board of pharmacy of the state or country where the
39 internship was served.

40 (f) Up to one third of the experience requirement for
41 licensure as a pharmacist may be fulfilled by an internship in a
42 foreign country.

43 (g) No pharmacist may compound or dispense any prescrip-
44 tion order when he or she has knowledge that the prescription
45 was issued by a practitioner without establishing an ongoing
46 practitioner-patient relationship. An online or telephonic
47 evaluation by questionnaire is inadequate to establish an
48 appropriate practitioner-patient relationship: *Provided*, That this
49 prohibition does not apply:

50 (1) In a documented emergency;

51 (2) In an on-call or cross-coverage situation; or

52 (3) Where patient care is rendered in consultation with
53 another practitioner who has an ongoing relationship with the
54 patient and who has agreed to supervise the patient's treatment,
55 including the use of any prescribed medications.

**§30-5-5b. Indirect supervision of registered pharmacy technicians
during pharmacist's break.**

1 (a) Indirect supervision of registered pharmacy technicians
2 within a pharmacy may be permitted to allow pharmacists to
3 take a break of no more than thirty minutes. The pharmacist
4 may leave the pharmacy area but may not leave the building
5 during the break.

6 (b) When a pharmacist is on break, pharmacy technicians
7 may continue to prepare prescriptions for the pharmacist's
8 verification. No prescription may be delivered until the pharma-
9 cist has verified the accuracy of the prescription, and counsel-
10 ing, if required, has been provided to or refused by the patient.

11 (c) A pharmacy that permits indirect supervision of
12 registered pharmacy technicians during a pharmacist's break
13 shall have either an interactive voice response system or a voice
14 mail system installed on the pharmacy phone line in order to

15 receive new prescription orders and refill authorizations during
16 the break.

17 (d) The pharmacy shall establish protocols that require a
18 registered pharmacy technician to interrupt the pharmacist's
19 break if an emergency arises.

**§30-5-12b. Definitions; selection of generic drug products; excep-
tions; records; labels; manufacturing standards;
rules; notice of substitution; complaints; notice
and hearing; immunity.**

1 (a) As used in this section:

2 (1) "Brand name" means the proprietary or trade name
3 selected by the manufacturer and placed upon a drug or drug
4 product, its container, label or wrapping at the time of packag-
5 ing.

6 (2) "Generic name" means the official title of a drug or
7 drug combination for which a new drug application, or an
8 abbreviated new drug application, has been approved by the
9 United States food and drug administration and is in effect.

10 (3) "Substitute" means to dispense without the prescriber's
11 express authorization a therapeutically equivalent generic drug
12 product in the place of the drug ordered or prescribed.

13 (4) "Equivalent" means drugs or drug products which are
14 the same amounts of identical active ingredients and same
15 dosage form and which will provide the same therapeutic
16 efficacy and toxicity when administered to an individual and is
17 approved by the United States food and drug administration.

18 (b) A pharmacist who receives a prescription for a brand
19 name drug or drug product shall substitute a less expensive
20 equivalent generic name drug or drug product unless in the

21 exercise of his or her professional judgment the pharmacist
22 believes that the less expensive drug is not suitable for the
23 particular patient: *Provided*, That no substitution may be made
24 by the pharmacist where the prescribing practitioner indicates
25 that, in his or her professional judgment, a specific brand name
26 drug is medically necessary for a particular patient.

27 (c) A written prescription order shall permit the pharmacist
28 to substitute an equivalent generic name drug or drug product
29 except where the prescribing practitioner has indicated in his or
30 her own handwriting the words "Brand Medically Necessary".
31 The following sentence shall be printed on the prescription
32 form: "This prescription may be filled with a generically
33 equivalent drug product unless the words 'Brand Medically
34 Necessary' are written, in the practitioner's own handwriting,
35 on this prescription form.": *Provided*, That "Brand Medically
36 Necessary" may be indicated on the prescription order other
37 than in the prescribing practitioner's own handwriting unless
38 otherwise required by federal mandate.

39 (d) A verbal prescription order shall permit the pharmacist
40 to substitute an equivalent generic name drug or drug product
41 except where the prescribing practitioner shall indicate to the
42 pharmacist that the prescription is "Brand Necessary" or "Brand
43 Medically Necessary". The pharmacist shall note the instruc-
44 tions on the file copy of the prescription or chart order form.

45 (e) No person may by trade rule, work rule, contract or in
46 any other way prohibit, restrict, limit or attempt to prohibit,
47 restrict or limit the making of a generic name substitution under
48 the provisions of this section. No employer or his or her agent
49 may use coercion or other means to interfere with the profes-
50 sional judgment of the pharmacist in deciding which generic
51 name drugs or drug products shall be stocked or substituted:
52 *Provided*, That this section shall not be construed to permit the
53 pharmacist to generally refuse to substitute less expensive

54 therapeutically equivalent generic drugs for brand name drugs
55 and that any pharmacist so refusing shall be subject to the
56 penalties prescribed in section twenty-two of this article.

57 (f) A pharmacist may substitute a drug pursuant to the
58 provisions of this section only where there will be a savings to
59 the buyer. Where substitution is proper, pursuant to this section,
60 or where the practitioner prescribes the drug by generic name,
61 the pharmacist shall, consistent with his or her professional
62 judgment, dispense the lowest retail cost, effective brand which
63 is in stock.

64 (g) All savings in the retail price of the prescription shall be
65 passed on to the purchaser; these savings shall be equal to the
66 difference between the retail price of the brand name product
67 and the customary and usual price of the generic product
68 substituted therefor: *Provided*, That in no event shall such
69 savings be less than the difference in acquisition cost of the
70 brand name product prescribed and the acquisition cost of the
71 substituted product.

72 (h) Each pharmacy shall maintain a record of any substitu-
73 tion of an equivalent generic name drug product for a pre-
74 scribed brand name drug product on the file copy of a written
75 or verbal prescription or chart order. Such record shall include
76 the manufacturer and generic name of the drug product se-
77 lected.

78 (i) All drugs shall be labeled in accordance with the
79 instructions of the practitioner.

80 (j) Unless the practitioner directs otherwise, the prescription
81 label on all drugs dispensed by the pharmacist shall indicate the
82 generic name using abbreviations, if necessary, and either the
83 name of the manufacturer or packager, whichever is applicable
84 in the pharmacist's discretion. The same notation will be made
85 on the original prescription retained by the pharmacist.

86 (k) A pharmacist may not dispense a product under the
87 provisions of this section unless the manufacturer has shown
88 that the drug has been manufactured with the following
89 minimum good manufacturing standards and practices by:

90 (1) Labeling products with the name of the original
91 manufacturer and control number;

92 (2) Maintaining quality control standards equal to or greater
93 than those of the United States food and drug administration;

94 (3) Marking products with identification code or mono-
95 gram; and

96 (4) Labeling products with an expiration date.

97 (l) The West Virginia board of pharmacy shall promulgate
98 rules in accordance with the provisions of chapter twenty-nine-a
99 of this code which establish a formulary of generic type and
100 brand name drug products which are determined by the board
101 to demonstrate significant biological or therapeutic
102 inequivalence and which, if substituted, would pose a threat to
103 the health and safety of patients receiving prescription medica-
104 tion. The formulary shall be promulgated by the board within
105 ninety days of the date of passage of this section and may be
106 amended in accordance with the provisions of chapter twenty-
107 nine-a of this code.

108 (m) No pharmacist shall substitute a generic named
109 therapeutically equivalent drug product for a prescribed brand
110 name drug product if the brand name drug product or the
111 generic drug type is listed on the formulary established by the
112 West Virginia board of pharmacy pursuant to this article or is
113 found to be in violation of the requirements of the United States
114 food and drug administration.

115 (n) Any pharmacist who substitutes any drug shall, either
116 personally or through his or her agent, assistant or employee,
117 notify the person presenting the prescription of such substitu-
118 tion. The person presenting the prescription shall have the right
119 to refuse the substitution. Upon request the pharmacist shall
120 relate the retail price difference between the brand name and the
121 drug substituted for it.

122 (o) Every pharmacy shall post in a prominent place that is
123 in clear and unobstructed public view, at or near the place
124 where prescriptions are dispensed, a sign which shall read:
125 "West Virginia law requires pharmacists to substitute a less
126 expensive generic named therapeutically equivalent drug for a
127 brand name drug, if available, unless you or your physician
128 direct otherwise." The sign shall be printed with lettering of at
129 least one and one-half inches in height with appropriate margins
130 and spacing as prescribed by the West Virginia board of
131 pharmacy.

132 (p) The West Virginia board of pharmacy shall promulgate
133 rules in accordance with the provisions of chapter twenty-nine-a
134 of this code setting standards for substituted drug products,
135 obtaining compliance with the provisions of this section and
136 enforcing the provisions of this section.

137 (q) Any person shall have the right to file a complaint with
138 the West Virginia board of pharmacy regarding any violation of
139 the provisions of this article. Such complaints shall be investi-
140 gated by the board of pharmacy.

141 (r) Fifteen days after the board has notified, by registered
142 mail, a person, firm, corporation or copartnership that such
143 person, firm, corporation or copartnership is suspected of being
144 in violation of a provision of this section, the board shall hold
145 a hearing on the matter. If, as a result of the hearing, the board
146 determines that a person, firm, corporation or copartnership is

147 violating any of the provisions of this section, it may, in
148 addition to any penalties prescribed by section twenty-two of
149 this article, suspend or revoke the permit of any person, firm,
150 corporation or copartnership to operate a pharmacy.

151 (s) No pharmacist complying with the provisions of this
152 section shall be liable in any way for the dispensing of a generic
153 named therapeutically equivalent drug, substituted under the
154 provisions of this section, unless the generic named therapeuti-
155 cally equivalent drug was incorrectly substituted.

156 (t) In no event where the pharmacist substitutes a drug
157 under the provisions of this section shall the prescribing
158 physician be liable in any action for loss, damage, injury or
159 death of any person occasioned by or arising from the use of the
160 substitute drug unless the original drug was incorrectly pre-
161 scribed.

162 (u) Failure of a practitioner to specify that a specific brand
163 name is necessary for a particular patient shall not constitute
164 evidence of negligence unless the practitioner had reasonable
165 cause to believe that the health of the patient required the use of
166 a certain product and no other.

**§30-5-16a. Filling of prescriptions more than one year after
issuance.**

1 No prescription order may be dispensed after twelve
2 months from the date of issuance by the practitioner. A pharma-
3 cist may fill the prescription after twelve months if the
4 prescriber confirms to the pharmacist that he or she still wants
5 the prescription filled and the pharmacist documents upon the
6 prescription that the confirmation was obtained.

CHAPTER 230

(Com. Sub. for H. B. 3051 — By Delegates Border and Perdue)

[Passed April 14, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section nine-a, article five, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the board of pharmacy to amend its licensing procedure through legislative rule making to include biennial licenses.

Be it enacted by the Legislature of West Virginia:

That section nine-a, article 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:

§30-5-9a. Authorization for future fee modifications to be made by rule and authorizing biennial licenses by rule.

1 (a) Notwithstanding any other provision of this code to the
2 contrary, beginning on the first day of July, one thousand nine
3 hundred ninety-nine, the board may set any fee authorized
4 under this article by legislative rule, in accordance with article
5 three, chapter twenty-nine-a of this code.

6 (b) The board may, by legislative rule, in accordance with
7 article three, chapter twenty-nine-a of this code, amend its
8 licensing procedure to include biennial licensing with a
9 staggered implementation schedule and a fee structure.

CHAPTER 231

(Com. Sub. for H. B. 2504 — By Delegates Hatfield, Angotti,
Doyle, L. Smith, Susman, Perdue and Compton)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article seven, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eighteen, relating to creating a nursing shortage study commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

§30-7-18. Nursing shortage study commission; legislative findings; members, appointment and expenses; duties.

- 1 (a) The Legislature finds the following:
 - 2 (1) Health care services are becoming complex and it is
 - 3 increasingly difficult for patients to access integrated services;
 - 4 (2) Quality of patient care is jeopardized because of
 - 5 insufficient nursing staff;
 - 6 (3) To ensure the adequate protection of patients in acute
 - 7 care settings, it is essential that qualified registered nurses and

8 other licensed nurses be accessible and available to meet the
9 needs of patients;

10 (4) In West Virginia, and across the country, concerns
11 about an increasing nursing shortage continue to grow;

12 (5) A number of factors contribute to the growing shortages
13 in qualified nursing personnel;

14 (6) The way care is delivered has changed dramatically
15 over the last decade with more people being treated in outpa-
16 tient settings, shorter and more intense lengths of stay in acute
17 and long-term care settings, and the development of alternatives
18 to nursing home care;

19 (7) These changes have led to a number of employment
20 options becoming available to nurses that did not exist previ-
21 ously, making it difficult for employers of nurses to recruit and
22 retain qualified nursing personnel;

23 (8) Severe cutbacks in the federal medicare program, state
24 budgetary pressures related to the medicaid program and
25 continued pressure from insurers to reduce their costs and to
26 retrospectively deny payment for services rendered, have: (A)
27 Made it extremely difficult for many providers to keep up with
28 other employers in salaries and benefits and to recruit and retain
29 qualified nursing personnel; and (B) increased stresses in the
30 work environment;

31 (9) The increasing reliance on temporary employment
32 agencies to meet nursing personnel needs further complicates
33 the situation as continuity of care is disrupted, quality of patient
34 care is jeopardized, and costs pressures are further increased;
35 and

36 (10) Because of the multifaceted nature of these problems,
37 it is critical that all of the interested and affected parties
38 cooperate and collaborate in the development of solutions.

39 (b) A nursing shortage study commission shall be created
40 by the West Virginia board of examiners for registered profes-
41 sional nurses. The board shall appoint eleven members to the
42 commission. The board shall appoint:

43 (1) Two individuals who are on the board of examiners for
44 registered professional nurses, one of which is employed in a
45 school of nursing;

46 (2) Two individuals that are employed as registered
47 professional nurses in a hospital and who work primarily
48 providing direct patient care;

49 (3) Two registered professional nurses who work as
50 long-term care nurses, one of whom works in a nursing home
51 and one of whom works for a home health agency, both of
52 whom work primarily providing direct patient care;

53 (4) One administrator of a hospital in this state;

54 (5) One doctoral prepared nurse researcher;

55 (6) One nursing home administrator; and

56 (7) Two representatives of the public not currently or
57 previously employed in hospital, nursing home or for a related
58 entity.

59 (c) Members of the commission are not entitled to compen-
60 sation for services performed as members, but are entitled to
61 reimbursement for all reasonable and necessary expenses
62 actually incurred in the performance of their duties. Six of the
63 appointed members is a quorum for the purpose of conducting
64 business. The board shall designate a chair, who is not a public
65 official. The commission shall conduct all meetings in accor-

66 dance with the open meeting law pursuant to article nine-a,
67 chapter six of this code.

68 (d) The commission shall:

69 (1) Study the nursing shortage in West Virginia and ways
70 to alleviate it, including, but not limited to:

71 (A) Evaluating mechanisms currently available in the state
72 and elsewhere intended to enhance education, recruitment, and
73 retention of nurses in the workforce and to improve quality of
74 care;

75 (B) Assessing the impact of shortages in nursing personnel
76 on access to, and the delivery of, quality patient care;

77 (C) Developing recommendations on strategies to reverse
78 the growing shortage of qualified nursing personnel in the state,
79 including:

80 (i) Determining what changes are needed to existing
81 programs, current scholarship programs and funding mecha-
82 nisms to better reflect and accommodate the changing health
83 care delivery environment and to improve quality of care to
84 meet the needs of patients;

85 (ii) Facilitating career advancement within nursing;

86 (iii) Identifying more accurately specific shortage areas in
87 a more timely manner;

88 (iv) Attracting middle and high school students into nursing
89 as a career; and

90 (v) Projecting a more positive and professional image of
91 nursing.

92 (2) Report to the Legislature by the first day of February,
93 two thousand two, its findings and recommendations on or
94 before the first day of February each year thereafter.

CHAPTER 232

(Com. Sub. for H. B. 2752 — By Delegates Angotti, Kominar,
Warner, J. Smith, Keener, Stemple and Perdue)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, three-a, three-b, four, five, six, seven, eight, nine and ten, article eight, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section eleven, all relating to the board of optometry; removing certain fees and providing they be established by legislative rule; increasing criminal fines; providing for licensure by endorsement; legislative rules; eliminating phrases no longer applicable; updating archaic language; and providing for continuation of the board.

Be it enacted by the Legislature of West Virginia:

That sections two, three, three-a, three-b, four, five, six, seven, eight, nine and ten, article eight, 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 eleven, all to read as follows:

ARTICLE 8. OPTOMETRISTS.

§30-8-2. Practice of optometry defined.

§30-8-3. Board of optometry; duties; disposition of moneys collected; compensation and expenses.

§30-8-3a. Registration of optometric corporations.

§30-8-3b. Practice of optometry by optometric corporations; limitations; optometrist-patient relationship not affected; biennial registration; penalty; severability.

§30-8-4. Registration prerequisite to practice of optometry; exceptions.

§30-8-5. Qualifications of applicant for registration; examination; duties of board as to examinations and certifications; education necessary for use of pharmaceutical agents.

§30-8-6. Certificate of registration or exemption shall be displayed.

§30-8-7. Biennial renewal of registration; restoration of expired certificate.

§30-8-8. Refusal to issue, suspension or revocation of certificate; false and deceptive advertising.

§30-8-9. Offenses; penalties; jurisdiction of magistrates.

§30-8-10. Unlawful practice of optometry by or for a corporation, etc.; practice in connection with commercial or mercantile establishment; penalties; injunctions.

§30-8-11. Continuation of the board.

§30-8-2. Practice of optometry defined.

1 Any one or any combination of the following practices shall
2 constitute the practice of optometry:

3 (a) The examination of the human eye, with or without the
4 use of drugs, prescribable for the human eye which drugs may
5 be used for diagnostic or therapeutic purposes, for topical
6 application to the anterior segment of the human eye and, by
7 any method other than surgery, to diagnose, treat or refer for
8 consultation or treatment any abnormal condition of the human
9 eye or its appendages;

10 (b) The employment without the use of surgery of any
11 instrument, device, method or diagnostic or therapeutic drug
12 intended for the purpose of investigating, examining, treating,
13 diagnosing, improving or correcting any visual defect or
14 abnormal condition of the human eye or its appendages;

15 (c) The prescribing, fitting, application, replacement,
16 duplication or alteration of lenses, prisms, contact lenses,
17 orthoptics, vision training, vision rehabilitation, diagnostic or
18 therapeutic drugs, or the furnishing or providing of any pros-
19 thetic device, or any other method other than surgery necessary
20 to correct or relieve any defects or abnormal conditions of the
21 human eye or its appendages.

22 (d) Nothing in this section shall be construed to permit an
23 optometrist to perform surgery, use drugs by injection or to use
24 or prescribe any drug for other than the specific purposes
25 authorized by this article.

**§30-8-3. Board of optometry; duties; disposition of moneys
collected; compensation and expenses.**

1 There shall be a state board of examiners in optometry,
2 known as the "West Virginia board of optometry," which shall
3 consist of five optometrists and two lay members, who shall be
4 appointed by the governor, by and with the advice and consent
5 of the Senate. Each optometric member of the board, at the time
6 of his or her appointment, shall have been a resident and a
7 registered practicing optometrist of this state for a period of not
8 less than three years immediately preceding his or her appoint-
9 ment.

10 The optometric members of the board in office on the first
11 day of July, two thousand one, shall, unless sooner removed,
12 continue to serve until their successors have been appointed and
13 have qualified. On or before the first day of July, two thousand
14 one, and annually thereafter, as their respective terms expire,
15 the governor shall appoint their successors so that one year he
16 or she shall appoint one member and in each of the two
17 succeeding years he or she shall appoint two members, each for
18 a term of three years commencing on the first day of July. Any
19 member shall be eligible for reappointment.

20 All fees and other moneys collected by the board pursuant
21 to the provisions of this article shall be kept in a separate fund
22 and expended solely for the purpose of this article. The
23 compensation for the members of the board and all expenses
24 incurred under this article shall be paid from this special fund.
25 No compensation or expense incurred under this article shall be
26 a charge against the general funds of this state.

27 The board shall propose rules for legislative approval in
28 accordance with article three, chapter twenty-nine-a of this
29 code, which are not inconsistent with any other provision or
30 section of this article:

31 (a) For the proper performance of its duties;

32 (b) To govern the ethical practice of optometry for the
33 safety, protection and welfare of the public; and

34 (c) To provide for examinations, licensure requirements,
35 continuing education requirements, fees, and to further effectuate
36 the provisions of this article, article one of this chapter, and
37 any other provisions set forth in state or federal law.

§30-8-3a. Registration of optometric corporations.

1 When one or more optometrists duly registered to practice
2 optometry in the state of West Virginia wish to form an
3 optometric corporation, such optometrist or optometrists shall
4 file a written application with the board of optometry, on a form
5 prescribed by the board, and shall furnish proof satisfactory to
6 the board that the signer is a duly registered optometrist, or if
7 there be more than one that all the signers of such application
8 are such duly registered optometrists. A fee as determined by
9 legislative rule shall accompany each such application, no part
10 of which may be refundable.

11 The board shall notify the secretary of state that a certifi-
12 cate of authorization has been issued to the individual or
13 individuals signing such application, to form an optometric
14 corporation.

15 When the secretary of state receives notification from the
16 board of optometry that an individual or individuals, duly
17 registered to practice optometry in the state of West Virginia
18 have been issued a certificate of authorization, he or she shall
19 attach such authorization to the agreement of incorporation and
20 upon compliance by the corporation with the applicable
21 provisions of chapter thirty-one of this code, shall notify the
22 incorporators that such corporation, through a duly registered
23 optometrist or optometrists, may engage in the practice of
24 optometry.

**§30-8-3b. Practice of optometry by optometric corporations;
limitations; optometrist-patient relationship not
affected; biennial registration; penalty;
severability.**

1 (a) An optometric corporation may practice optometry only
2 through an individual optometrist or optometrists duly regis-
3 tered to practice optometry in the state of West Virginia, but
4 such optometrist or optometrists may be employees rather than
5 shareholders of such corporation, and nothing herein contained
6 shall be construed to require a license or other legal authoriza-
7 tion of any individual employed by such corporation to perform
8 services for which no license or other legal authorization is
9 otherwise required. Nothing contained in sections three-a and
10 ten and this section of this article is meant or intended to
11 change in any way the rights, duties, privileges, responsibilities
12 and liabilities incident to the optometrist-patient relationship
13 nor is it meant or intended to change in any way the personal
14 character of the optometrist- patient relationship. A corporation
15 holding such certificate of authorization shall register bienni-

16 ally, on or before the thirtieth day of June, on a form prescribed
17 by the board of optometry and shall pay a biennial registration
18 fee as determined by legislative rule.

19 (b) An optometric corporation holding a certificate of
20 authorization shall cease to engage in the practice of optometry
21 upon being notified by the board of optometry that any of its
22 shareholders is no longer a duly registered optometrist in this
23 state, or when any shares of such corporation have been sold or
24 disposed of to a person who is not a duly registered optometrist:
25 *Provided*, That the personal representative of a deceased
26 shareholder shall have a period, not to exceed twelve months
27 from the date of such shareholder's death, to dispose of such
28 shares; but nothing contained herein shall be construed as
29 affecting the existence of such corporation or its right to
30 continue to operate for all lawful purposes other than the
31 practice of optometry.

32 (c) No corporation shall practice optometry, or any of its
33 branches, or hold itself out as being capable of doing so,
34 without a certificate from the board, or after its certificate has
35 been revoked, or if suspended, during the term of such suspen-
36 sion. A certificate signed by the secretary of the board of
37 optometry to which is affixed the official seal of the board to
38 the effect that it appears from the records of the board that no
39 such certificate to practice optometry or any of its branches in
40 the state has been issued to any such corporation specified
41 therein or that such certificate has been revoked or suspended
42 shall be admissible in evidence in all courts of this state and
43 shall be prima facie evidence of the facts stated therein.

44 (d) Any officer, shareholder or employee of such corpora-
45 tion who participates in a violation of any provision of this
46 section shall be guilty of a misdemeanor and, upon conviction
47 thereof, shall be fined not less than one thousand dollars nor
48 more than five thousand dollars.

§30-8-4. Registration prerequisite to practice of optometry; exceptions.

1 No person shall practice or offer to practice optometry in
2 this state without first applying for and obtaining a certificate
3 of registration for such purpose from the West Virginia board
4 of optometry; but the following persons, firms and corporations
5 are exempt from the operation of this article, except as hereinaf-
6 ter provided:

7 (a) Persons authorized under the laws of this state to
8 practice medicine and surgery or osteopathy;

9 (b) Persons, firms and corporations who sell eyeglasses or
10 spectacles in a store, shop or other permanently established
11 place of business on prescriptions from persons authorized
12 under the laws of this state to practice either optometry or
13 medicine and surgery;

14 (c) Persons, firms and corporations who manufacture or
15 deal in eyeglasses or spectacles in a store, shop or other
16 permanently established place of business, and who neither
17 practice nor attempt to practice optometry.

**§30-8-5. Qualifications of applicant for registration; examina-
tion; duties of board as to examinations and certifica-
tions; education necessary for use of pharmaceutical
agents.**

1 (a) An applicant for registration shall present satisfactory
2 evidence that he or she is at least twenty-one years of age, of
3 good moral character and has graduated from a school or
4 college of optometry accepted by said board. No school or
5 college of optometry shall be accepted by the West Virginia
6 board of optometry unless at first it has been accredited by a
7 regional or professional accreditation organization which is
8 recognized by the national commission on accreditation or the

9 United States commission of education. Each applicant shall
10 submit to and be examined in all phases of optometry as is
11 provided by a school or college of optometry.

12 (b) The West Virginia board of optometry shall be responsi-
13 ble to determine the educational training received by the
14 applicant from the schools and colleges of optometry, the
15 educational qualifications of each applicant and the administer-
16 ing of the examination and certification of each applicant
17 commensurate with his or her education. No optometrist shall
18 be registered or certified to practice optometry in the state of
19 West Virginia in any area that is beyond the scope of his or her
20 educational training as determined by the West Virginia board
21 of optometry: *Provided*, That any optometrist presently
22 registered in the state of West Virginia and who desires to
23 employ the use of pharmaceutical agents must submit to the
24 West Virginia board of optometry evidence of satisfactory
25 completion of all necessary educational requirements as made
26 mandatory by the West Virginia board of optometry: *Provided*,
27 *however*, That the West Virginia board of optometry shall
28 provide for continuing educational requirements to be com-
29 pleted from time to time by all optometrists desiring to employ
30 the use of pharmaceutical agents.

31 (c) The board may propose rules for legislative approval in
32 accordance with article three, chapter twenty-nine-a of this
33 code, to provide for licensure by endorsement for applicants
34 licensed by other states whose licensure requirements are
35 equivalent to those of this state, and who meet the requirements
36 as set forth in this article and in the legislative rules of the
37 board.

§30-8-6. Certificate of registration or exemption shall be displayed.

1 Every person practicing optometry shall display his or her
2 certificate of registration in a conspicuous place in the principal
3 office wherein he or she practices optometry and, whenever
4 required, shall exhibit such certificate to the board of examiners
5 or its authorized representatives.

§30-8-7. Biennial renewal of registration; restoration of expired certificate.

1 Every registered optometrist who desires to continue in
2 active practice or service shall, biennially, on or before the first
3 day of August, of that year, renew his or her certificate of
4 registration and pay a biennial renewal fee as determined by
5 legislative rule. Every certificate of registration which has not
6 been renewed shall expire on the first day of August of that
7 year. A registered optometrist whose certificate of registration
8 has expired for three years or less may have the same restored
9 only upon payment of all required renewal and late fees for
10 each lapsed year, and submit proof of accumulated continuing
11 education hours for each year that has lapsed.

§30-8-8. Refusal to issue, suspension or revocation of certificate; false and deceptive advertising.

1 The board may either refuse to issue, or may refuse to
2 renew, or may suspend or revoke any certificate of registration
3 for any one, or any combination, of the following causes:
4 Violation of a rule or regulation governing the ethical practice
5 of optometry promulgated by the board under the authority
6 granted by this article; conviction of a felony, as shown by a
7 certified copy of the record of the court wherein such convic-
8 tion was had; the obtaining of, or the attempt to obtain, a
9 certificate of registration, or practice in the profession of
10 optometry, or money, or any other thing of value, by fraudulent
11 misrepresentation; gross malpractice; continued practice by a
12 person knowingly having an infectious disease; alcohol or

13 substance abuse; advertising, practicing, or attempting to
14 practice under a name other than one's own; advertising by
15 means of knowingly false or deceptive statements. All advertis-
16 ing, whether by means of newspapers, or in any manner,
17 whatsoever, of the following statements, or statements of
18 similar import, that are "false and deceptive" within the
19 meaning of this law, shall be prohibited. False and deceptive
20 advertising shall include, but not be limited to the following: (a)
21 Advertising "free examination of eyes," or words of similar
22 import and meaning; (b) advertising frames or mountings for
23 glasses, contact lenses, or other optical devices which does not
24 accurately describe the same in all its component parts.

§30-8-9. Offenses; penalties; jurisdiction of magistrates.

1 Each of the following shall constitute a misdemeanor
2 punishable, upon conviction, for the first offense, by a fine of
3 not less than one thousand nor more than five thousand dollars
4 and, upon conviction for a second or subsequent offense, by a
5 fine of not less than five thousand nor more than ten thousand
6 dollars, or by imprisonment for not less than thirty nor more
7 than ninety days, or by both such fine and imprisonment, at the
8 discretion of the court: The practice of, or an attempt to
9 practice, optometry, without a certificate of registration as a
10 registered optometrist, except as hereinbefore provided;
11 permitting any person in one's employ, supervision or control,
12 to practice optometry, unless such person has a certificate of
13 registration as a registered optometrist in the state of West
14 Virginia when such certificate is required by this article; the
15 obtaining of, or an attempt to obtain, a certificate of registra-
16 tion, or practice in the profession, or money, or anything of
17 value, by fraudulent misrepresentation; the making of any
18 willfully false oath or affirmation, whenever an oath or affirma-
19 tion is required by this article; the violation of the provisions of
20 section six of this article.

§30-8-10. Unlawful practice of optometry by or for a corporation, etc.; practice in connection with commercial or mercantile establishment; penalties; injunctions.

1 Except as provided in sections three-a and three-b of this
2 article, no corporation or voluntary association shall practice,
3 or assume to practice, or in any manner hold itself out to the
4 public as being entitled to practice the profession of optometry,
5 or advertise the title of optometrist in such manner as to convey
6 the impression to the public that it is entitled to practice
7 optometry, or furnish optometric advice and services, or
8 advertise that, either alone or together with or by or through any
9 person, whether a duly registered and licensed optometrist or
10 not, it has, owns, conducts or maintains an office or place for
11 practice of optometry. Except as provided in sections three-a
12 and three-b of this article, no duly registered and licensed
13 optometrist shall associate himself or herself with any corpora-
14 tion or voluntary association for the practice of optometry, or in
15 any manner practice such profession, on a salary or commission
16 basis, for any such corporation or voluntary association. Any
17 corporation or voluntary association violating any of the
18 provisions of this section, or any officer, trustee, director, agent,
19 or employee of such corporation or voluntary association who,
20 either directly or indirectly, engages in any of the acts herein
21 prohibited, or assists such corporation or voluntary association
22 to do such prohibited acts, shall be guilty of a misdemeanor
23 and, upon conviction thereof, shall be fined not less than one
24 thousand nor more than five thousand dollars. The fact that any
25 such officer, trustee, director, agent or employee shall be a duly
26 registered and licensed optometrist shall not be held to permit
27 or allow any such corporation or voluntary association to do the
28 acts prohibited herein, nor shall such fact be a defense upon the
29 trial of any of the persons hereinbefore mentioned for a
30 violation of this section. Any duly registered and licensed
31 optometrist who shall violate the provisions of this section shall
32 be guilty of a misdemeanor and, upon conviction thereof, shall

33 be fined not less than one thousand dollars nor more than five
34 thousand dollars, and each and every day such violation
35 continues shall constitute a separate offense; and in addition to
36 the foregoing penalties, such offending optometrist shall have
37 his or her license suspended for a period of one year by the
38 court in which such conviction is had: *Provided*, That this
39 section shall not apply to a partnership of two or more duly
40 registered and licensed optometrists who practice under their
41 own names.

42 It shall be unlawful for any registered optometrist to
43 practice his or her profession as an employee, lessee, or
44 sublessee of any commercial or mercantile establishment or to
45 practice his or her profession in connection therewith, or to
46 advertise either in person or through any commercial or
47 mercantile establishment that he or she is a duly registered
48 practitioner, and is practicing or will practice optometry as an
49 employee, lessee, or sublessee of any such commercial or
50 mercantile establishment or in connection therewith. But
51 nothing herein shall be construed to prohibit or prevent the
52 rendering of professional services to the officers and employees
53 of any person, firm or corporation by an optometrist, whether
54 or not the compensation for such services is paid by the officers
55 and employees, or by the employer, or jointly by all or any of
56 them. Any person violating this provision shall be guilty of a
57 misdemeanor and, upon conviction thereof, shall be fined not
58 less than one thousand nor more than five thousand dollars, and
59 each and every day such violation continues shall constitute a
60 separate offense.

61 The circuit court of any county in which the violation
62 occurred shall have jurisdiction to restrain by injunction the
63 violation of any of the provisions of this article.

§30-8-11. Continuation of the board.

1 The West Virginia board of optometry shall continue to
 2 exist until the first day of July, two thousand seven, pursuant to
 3 the provisions of article ten, chapter four of this code, unless
 4 sooner terminated, continued or reestablished pursuant to the
 5 provisions of that article.

CHAPTER 233

**(Com. Sub. for H. B. 2503 — By Delegates Douglas, Kuhn,
 Manchin, Marshall, Perdue, Azinger and Stalnaker)**

[Passed April 12, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact article nine, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the regulation of the practice of accountancy generally; establishing licensure requirements; and providing a civil cause of action and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That article nine, 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 9. ACCOUNTANTS.

§30-9-1. License required to practice.

§30-9-2. Definitions.

§30-9-3. Board of accountancy; appointment; terms, qualifications of members; removal of members; compensation of members.

§30-9-4. Powers of the board.

§30-9-5. Rule-making authority.

§30-9-6. Fees; special fund; administrative fines.

- §30-9-7. Issuance of certificate; certificates issued prior to the first day of July, two thousand one.
- §30-9-8. Education, examination and experience certificate requirements.
- §30-9-9. Substantial equivalency certificate requirements.
- §30-9-10. Not substantially equivalent certificate requirements.
- §30-9-11. Foreign designation certificate requirements.
- §30-9-12. Certificate renewal; conditions of renewal.
- §30-9-13. Duty to inform board of denials, suspensions, revocations, limitations.
- §30-9-14. Holder of out-of-state certificate establishing principal place of business in state.
- §30-9-15. Public accountants.
- §30-9-16. Substantial equivalency practice privileges.
- §30-9-17. Issuance and renewal of permits.
- §30-9-18. Notification of changes in firm ownership; revocation of permit.
- §30-9-19. Issuance and renewal of authorizations.
- §30-9-20. Refuse to issue or renew; suspension, revocation of license; disciplinary action.
- §30-9-21. Complaints; investigation.
- §30-9-22. Hearing; judicial review; notification to out-of-state board of accountancy; costs of proceedings.
- §30-9-23. Reinstatement.
- §30-9-24. Licensees' working papers; clients' records.
- §30-9-25. Commissions, referral fees and contingent fees.
- §30-9-26. Unlawful acts.
- §30-9-27. Injunctions against unlawful acts.
- §30-9-28. Criminal proceedings; penalties.
- §30-9-29. Single act evidence of practice.
- §30-9-30. Accounting corporations.
- §30-9-31. Inapplicability of article.
- §30-9-32. Termination date.

§30-9-1. License required to practice.

- 1 To protect the public interest in receiving accurate and
- 2 reliable financial information and assurance, certified public
- 3 accountants, public accountants, and accounting firms are
- 4 required to be licensed as provided in this article.

§30-9-2. Definitions.

1 As used in this article, the following words and terms have
2 the following meanings, unless the context or associated
3 language clearly indicates otherwise:

4 (1) "Assurance" means any act or action, whether written
5 or oral, expressing an opinion or conclusion about the reliability
6 of a financial statement or about its conformity with any
7 financial accounting standards.

8 (2) "Attest services" means providing any audit or review
9 of a financial statement or any examination of prospective
10 financial information performed in accordance with applicable
11 statements on standards.

12 (3) "Audit" means expressing an opinion about the fairness
13 of presentation of financial statements in accordance with
14 applicable statements on standards.

15 (4) "Authorization" means an authorization issued pursuant
16 to this article that entitles a permit holder or an individual
17 practitioner to perform attest or compilation services.

18 (5) "Board" means the West Virginia board of accountancy.

19 (6) "Business entity" means any corporation, partnership,
20 limited partnership, limited liability partnership, professional
21 limited liability partnership, limited liability company, profes-
22 sional limited liability company, joint venture, business trust or
23 any other form of business organization. The term "business
24 entity" includes a firm.

25 (7) "Certificate" means a certificate as a certified public
26 accountant issued or renewed by the board pursuant to this
27 article or corresponding provisions of prior law.

28 (8) "Certified public accountant" or "CPA" means the
29 holder of a certificate.

30 (9) "Client" means a person or entity that agrees with a
31 licensee or licensee's employer to receive any professional
32 service.

33 (10) "Commission" means compensation, except a referral
34 fee, for recommending or referring any product or service to be
35 supplied by another person.

36 (11) "Compilation services" means providing a service
37 performed in accordance with applicable statements on stan-
38 dards that presents, in the form of a financial statement,
39 information that is the representation of management without
40 an expression of assurance on the statement: *Provided*, That this
41 definition does not apply to the use of the term "compilation"
42 in section thirty-one of this article.

43 (12) "Contingent fee" means a fee established for the
44 performance of any service pursuant to an arrangement in
45 which no fee will be charged unless a specified finding or result
46 is attained, or in which the amount of the fee is otherwise
47 dependent upon the finding or result of the service. A fee fixed
48 by a court, taxing authority or other public authority is not a
49 contingent fee.

50 (13) "Examination," when used with reference to prospec-
51 tive financial statements, means expressing an opinion about
52 the fairness of presentation of financial information in accor-
53 dance with applicable statements on standards.

54 (14) "Financial statement" means a writing or other
55 presentation, including accompanying notes, which presents, in
56 whole or in part, historical or prospective financial position,
57 results of operations or changes in financial position of any
58 person, corporation, partnership or other entity.

59 (15) "Firm" means any business entity, including an
60 accounting corporation, in which two or more certified public

61 accountants or public accountants hold an ownership or
62 membership interest, in terms of the financial interests and
63 voting rights of all partners, officers, shareholders, members or
64 managers, and the primary business activity of which is the
65 provision of professional services to the public by certified
66 public accountants or public accountants.

67 (16) "Firm ownership requirements" means, with respect to
68 any firm, the requirements that: (A) Sixty percent of the
69 ownership of the firm, in terms of financial interests and voting
70 rights of all partners, officers, shareholders, members or
71 managers, belongs either to certified public accountants or
72 public accountants who have met the continuing professional
73 education requirements of subsection (b), section twelve of this
74 article and who are not subject to the exemption or limitation
75 set forth in subdivisions (1) or (2) of subsection (b), section
76 twelve of this article, but not a combination of certified public
77 accountants and public accountants; and (B) all owners of the
78 firm who are not certified public accountants or public accoun-
79 tants are active participants in the firm.

80 (17) "Foreign" means any country other than the United
81 States.

82 (18) "Good moral character" means lack of a history of
83 dishonesty or felonious activity.

84 (19) "Individual practitioner" means a certified public
85 accountant or a public accountant who offers professional
86 services to the public but who does not practice in a firm.

87 (20) "License" means a certificate, permit, registration or
88 authorization.

89 (21) "Licensee" means the holder of a license.

90 (22) “Manager” means a manager of a limited liability
91 company.

92 (23) “Member” means a member of a limited liability
93 company.

94 (24) “Nonlicensee” means a person or business entity that
95 does not hold a license.

96 (25) “Out-of-state certificate” means a valid certificate as
97 a certified public accountant or equivalent designation issued or
98 renewed under the laws of another state: *Provided*, That
99 “out-of-state certificate” does not include any certificate as a
100 certified public accountant or equivalent designation that was
101 issued or renewed solely by virtue of a holder’s prior status as
102 a public accountant or its equivalent in the state of issuance and
103 not by virtue of the holder’s having met the certification
104 requirements of the state of issuance.

105 (26) “Out-of-state permit” means a valid permit as a firm of
106 certified public accountants or another designation equivalent
107 to a permit issued or renewed by the board and that is issued or
108 renewed under the laws of another state.

109 (27) “Peer Review” means a study, appraisal, or review of
110 one or more aspects of the professional work of a licensee by a
111 person who holds a certificate or an out-of-state certificate and
112 who is not affiliated with the licensee being reviewed.

113 (28) “Permit” means a permit issued to a firm pursuant to
114 this article.

115 (29) “Professional services” means those services that
116 involve the specialized knowledge and skills of a certified
117 public accountant or a public accountant.

118 (30) “Public accountant” means a person holding a registra-
119 tion who is not a certified public accountant.

120 (31) “Referral fee” means compensation for recommending
121 or referring any service of a licensee to any person.

122 (32) “Registration” means a registration as a public
123 accountant issued by the board pursuant to prior law governing
124 the registration of public accountants and renewed by the board
125 pursuant to this article.

126 (33) “Report,” when used with reference to financial
127 statements, means an opinion or disclaimer of opinion or other
128 form of language or representation which states or implies any
129 form of assurance or denial of assurance.

130 (34) “Rule” means any rule proposed for legislative
131 approval by the board pursuant to this article.

132 (35) “State” means any state of the United States, the
133 District of Columbia, Puerto Rico, the U.S. Virgin Islands or
134 Guam.

135 (36) “Substantial equivalency” or “substantially equivalent”
136 means or refers to a determination by the board that the
137 education, examination and experience requirements contained
138 in the statutes or rules of another state are comparable to or
139 exceed the education, examination and experience requirements
140 contained in the uniform accountancy act, or that an individual
141 certified public accountant’s education, examination and
142 experience qualifications are comparable to or exceed the
143 education, examination and experience requirements contained
144 in the uniform accountancy act.

145 (37) “Substantial equivalency practitioner” means any
146 individual holding an out-of-state certificate who has notified
147 the board of his or her intent to practice accountancy in the state

148 under the provisions of this article and has complied with the
149 provisions of section sixteen of this article.

150 (38) "Uniform accountancy act" means the uniform
151 accountancy act, third edition, revised (November 1999), jointly
152 published by the American institute of certified public accoun-
153 tants and the national association of state boards of accoun-
154 tancy.

**§30-9-3. Board of accountancy; appointment; terms, qualifica-
tions of members; removal of members; compensa-
tion of members.**

1 (a) The West Virginia board of accountancy is hereby
2 continued.

3 (b) (1) Commencing with the board terms beginning the
4 first day of July, two thousand one, the board shall consist of
5 seven members appointed for terms of three years by the
6 governor with the advice and consent of the Senate. Five
7 members must be certified public accountants; one member
8 must be a public accountant so long as twenty-five or more
9 public accountants are registered by the board, but if there are
10 fewer than twenty-five public accountants registered by the
11 board, then the member may be either a public accountant or a
12 certified public accountant; and one member must be a citizen
13 member who is a resident of this state, who is not licensed
14 under the provisions of this article and who also is not a
15 bookkeeper, enrolled agent or a person who provides or offers
16 to provide to the public any bookkeeping, tax preparation,
17 financial advisory or insurance service: *Provided*, That the
18 members of the board in office on the first day of July, two
19 thousand one, shall continue to serve until their respective
20 terms expire.

21 (2) Each licensed member of the board, at the time of his or
22 her appointment, must have held a license in this state for a
23 period of not less than five years immediately preceding the
24 appointment and each member must be a resident of this state
25 during the appointment term.

26 (3) Each appointment of a public accountant, whether for
27 a full term or to fill a vacancy, must be made by the governor
28 from among three nominees selected by the West Virginia
29 public accountants association and each appointment of a
30 certified public accountant, whether for a full term or to fill a
31 vacancy, must be made by the governor from among three
32 nominees selected by the West Virginia society of certified
33 public accountants: *Provided*, That when the appointment of a
34 certified public accountant is to fill the seat held on the first day
35 of July, two thousand one, by a public accountant, then the
36 appointment, whether for a full term or to fill a vacancy, must
37 be made by the governor from among three nominees selected
38 by the West Virginia public accountants association. When the
39 appointment is for a full term, the nominations must be submit-
40 ted to the governor not later than eight months prior to the date
41 on which the appointment will become effective. When the
42 appointment is to fill a vacancy, the nominations must be
43 submitted to the governor within ten days after a request for the
44 nominations has been made by the governor to the president of
45 the West Virginia society of certified public accountants or
46 president of the West Virginia public accountants association.
47 If the society or the association fails to submit to the governor
48 nominations for an appointment in accordance with the require-
49 ments of this section, the governor may make the appointment
50 without the nominations.

51 (c) No member may serve more than two consecutive full
52 terms, and any member having served two full terms may not
53 be appointed for one year after completion of his or her second

54 full term. A member shall continue to serve until his or her
55 successor has been appointed and qualified.

56 (d) If a board member is unable to complete a term, the
57 governor shall appoint a person of similar qualifications to
58 complete the unexpired term: *Provided*, That if the board
59 member is a certified public accountant or public accountant,
60 the governor shall appoint a person from any nominees submit-
61 ted pursuant to subdivision (3), subsection (b) of this section.
62 Each vacancy occurring on the board must be filled by appoint-
63 ment within sixty days after the vacancy is created.

64 (e) The governor may remove any member from the board
65 for neglect of duty, incompetency or official misconduct.

66 (f) Any member of the board shall immediately and
67 automatically forfeit his or her membership if he or she has his
68 or her certificate or registration suspended or revoked by the
69 board, is convicted of a felony under the laws of any state or the
70 United States, or becomes a nonresident of this state.

71 (g) Each member of the board shall receive compensation
72 and expense reimbursement in accordance with section eleven,
73 article one of this chapter.

§30-9-4. Powers of the board.

1 The board has all the powers set forth in article one of this
2 chapter, and in addition may:

3 (1) Sue and be sued in its official name as an agency of this
4 state;

5 (2) Hire, fix the compensation of and discharge the employ-
6 ees necessary for the administration of this article;

7 (3) Examine and determine the qualifications of any
8 applicant for a license;

9 (4) Issue, renew, deny, suspend, revoke or reinstate licenses
10 and take disciplinary action against licensees;

11 (5) Investigate alleged violations of the provisions of this
12 article, reasonable rules promulgated hereunder and orders and
13 final decisions of the board;

14 (6) Conduct hearings upon charges calling for the revoca-
15 tion or suspension of a license or take disciplinary action
16 against a licensee, firm or substantial equivalency practitioner;

17 (7) Cooperate with the appropriate authorities in other
18 states in the investigation and enforcement of violations of this
19 article or comparable acts of other states;

20 (8) Propose rules in accordance with the provisions of
21 article three, chapter twenty-nine-a of this code; and

22 (9) Take all other actions necessary and proper to effectuate
23 the purposes of this article.

§30-9-5. Rule-making authority.

1 (a) The board shall propose rules for legislative approval in
2 accordance with the provisions of article three, chapter
3 twenty-nine-a of this code to implement the provisions of this
4 article, including, but not limited to, the following:

5 (1) The education required of an applicant;

6 (2) The experience required of an applicant;

7 (3) The examination administered under this article;

- 8 (4) Issuing or renewing a certificate, registration, permit or
9 authorization;
- 10 (5) Denying, suspending, revoking, or reinstating a certifi-
11 cate, registration, permit or authorization;
- 12 (6) The conduct of investigations;
- 13 (7) Firm ownership requirements;
- 14 (8) Accounting corporations;
- 15 (9) Substantial equivalency requirements;
- 16 (10) Continuing professional education requirements for
17 licensees, including exemptions;
- 18 (11) Peer review requirements;
- 19 (12) Professional conduct requirements;
- 20 (13) Identifying professional services required to be
21 performed in accordance with the applicable statements on
22 standards;
- 23 (14) Use of the titles “certified public accountant,” “CPA,”
24 “public accountant” and “PA”;
- 25 (15) Use of commissions, referral fees and contingent fees;
- 26 (16) Fees for the issuance and renewal of a certificate,
27 registration, permit or authorization and other fees authorized
28 by this article; and
- 29 (17) Other rules the board considers necessary and proper
30 for implementing the provisions of this article.

31 (b) All rules in effect on the first day of July, two thousand
32 one, will remain in effect until they are superseded.

§30-9-6. Fees; special fund; administrative fines.

1 (a) All fees and other moneys, except administrative fines,
2 received by the board must be deposited in the separate special
3 fund which has been established for the board in the state
4 treasury and must be used for the administration of this article.
5 Except as may be provided in section eleven, article one of this
6 chapter, the board shall retain the amounts in the special fund
7 from year to year. No compensation or expense incurred under
8 this article is a charge against the general revenue fund.

9 (b) Any amounts received as administrative fines imposed
10 pursuant to this article must be deposited into the general
11 revenue fund of the state treasury.

**§30-9-7. Issuance of certificate; certificates issued prior to the
first day of July, two thousand one.**

1 (a) The board shall issue a certificate to an applicant of
2 good moral character who demonstrates that:

3 (1) He or she meets the qualifications for a certificate set
4 forth in section eight of this article;

5 (2) He or she holds an out-of-state certificate and meets the
6 requirements of section nine of this article;

7 (3) He or she holds an out-of-state certificate, does not meet
8 the requirements of section nine of this article but does meet the
9 requirements of section ten of this article; or

10 (4) He or she holds a substantially equivalent foreign
11 designation and meets the requirements of section eleven of this
12 article.

13 (b) Certificates will initially be issued for a period to expire
14 on the thirtieth day of June following the date of issue.

15 (c) Applications for the issuance of certificates must be
16 made in the form specified by the board by rule: *Provided*, That
17 the application must require an applicant to list all states in
18 which he or she has applied for or holds an out-of-state certifi-
19 cate and any past denial, revocation or suspension of an out-of-
20 state certificate.

21 (d) The board shall charge an application fee in an amount
22 specified by rule.

23 (e) A certificate issued by the board prior to the first day of
24 July, two thousand one, will for all purposes be considered a
25 certificate issued under this section: *Provided*, That a person
26 holding a certificate issued prior to the first day of July, two
27 thousand one, must renew the certificate pursuant to section
28 twelve of this article.

§30-9-8. Education, examination and experience certificate requirements.

1 The board shall issue a certificate to an applicant of good
2 moral character who meets the following requirements:

3 (1) Before applying for the examination prescribed in
4 subdivision (2) of this section, the applicant has met the
5 following educational requirements:

6 (A) For an applicant making his or her initial application
7 for examination prior to the fifteenth day of February, two
8 thousand, a baccalaureate degree or its equivalent; or

9 (B) For an applicant making his or her initial application for
10 examination on or after the fifteenth day of February, two
11 thousand, at least one hundred fifty semester hours of college

12 education including a baccalaureate or higher degree conferred
13 by a college or university;

14 (2) Has passed the uniform certified public accountant
15 examination published by the American institute of certified
16 public accountants or its successor and any additional examina-
17 tion required by the board by rule that tests the applicant's
18 knowledge of subjects related to the practice of accounting; and

19 (3) Demonstrates that he or she has had one year of
20 experience in providing any type of service or advice involving
21 the use of accounting, attest, compilation, management advi-
22 sory, financial advisory, tax or consulting skills. The experience
23 requirement may be satisfied by employment in private
24 practice, government, industry, academia or public practice. An
25 applicant's experience must be verified by a licensee and must
26 meet requirements specified by rule.

§30-9-9. Substantial equivalency certificate requirements.

1 The board shall issue a certificate to an applicant who holds
2 a valid out-of-state certificate if the state of issuance extends
3 similar privileges to holders of certificates under circumstances
4 similar to those described in this section and if the board
5 determines that:

6 (1) The state of issuance of the out-of-state certificate has
7 certified public accountant certification requirements that are
8 substantially equivalent to the certified public accountant
9 certification requirements of the uniform accountancy act; or

10 (2) The applicant has individual qualifications that are
11 substantially equivalent to the certified public accountant
12 certification requirements of the uniform accountancy act.

§30-9-10. Not substantially equivalent certificate requirements.

1 The board shall issue a certificate to an applicant of good
2 moral character who holds a valid out-of-state certificate but
3 who does not qualify for a certificate under the provisions of
4 section nine of this article if the applicant meets the education,
5 experience, examination and continuing education requirements
6 specified by the board by rule.

§30-9-11. Foreign designation certificate requirements.

1 The board shall issue a certificate to an applicant of good
2 moral character who holds a foreign designation in public
3 accountancy if:

4 (1) The foreign authority that granted the designation
5 regulates the practice of public accountancy and allows a
6 person holding a certificate issued by this state to obtain the
7 foreign authority's comparable designation; and

8 (2) The applicant meets the education, examination,
9 experience and continuing education requirements specified by
10 the board by rule.

§30-9-12. Certificate renewal; conditions of renewal.

1 (a) The board shall renew a certificate for a one-year period
2 beginning on the first day of July of each year after its issuance
3 in accordance with renewal procedures and fees specified by
4 rule: *Provided*, That an applicant for renewal of a certificate
5 shall list on his or her application all states and foreign jurisdic-
6 tions in which he or she has applied for or held an out-of-state
7 certificate or foreign designation and any denial, revocation or
8 suspension of an out-of-state certificate or foreign designation.

9 (b) The board shall require as a condition for the renewal of
10 a certificate that each certified public accountant participate in
11 continuing professional education in accordance with the

12 requirements specified by rule, subject to the following
13 exemptions and limitations:

14 (1) The board shall by rule exempt from the continuing
15 professional education requirements set forth in this subsection
16 any certified public accountant who does not perform or offer
17 to perform any professional service to the public, either directly
18 or indirectly through his or her employer.

19 (2) Any certified public accountant receiving the exemption
20 from continuing professional education requirements must
21 place the word "inactive" adjacent to his or her "CPA" title on
22 any business card, telephone directory listing, letterhead or any
23 other similar document or device, with the exception of the
24 licensee's certificate on which the "CPA" title appears: *Pro-*
25 *vided*, That a certified public accountant receiving the exemp-
26 tion from continuing professional education requirements who
27 has completely discontinued his or her performance of profes-
28 sional services, who has no active management or supervisory
29 responsibilities in a firm, and who is at least sixty-two years of
30 age is not required to place the word "inactive" or any other
31 word adjacent to his or her "CPA" title on any business card,
32 telephone directory listing, letterhead or any other similar
33 document or device.

34 (3) The board may by rule phase in continuing professional
35 education requirements over a period of three years for any
36 certified public accountant who, as of the first day of July, two
37 thousand one, has not been subject to continuing professional
38 education requirements and who subsequently elects to perform
39 or offers to perform any professional service to the public
40 during a subsequent certificate renewal period within the three-
41 year phase-in period.

**§30-9-13. Duty to inform board of denials, suspensions, revoca-
tions, limitations.**

- 1 Each licensee and each substantial equivalency practitioner
- 2 must notify the board, within thirty days of its occurrence, of
- 3 any denial, suspension or revocation of or any limitation placed
- 4 on a license or out-of-state certificate.

§30-9-14. Holder of out-of-state certificate establishing principal place of business in state.

- 1 A holder of an out-of-state certificate who intends to
- 2 establish his or her principal place of business in this state must
- 3 first apply for the issuance of a certificate.

§30-9-15. Public accountants.

- 1 A person who on the first day of July, two thousand one,
- 2 holds a registration as a public accountant issued under prior
- 3 law is entitled to have the registration renewed under the same
- 4 terms, upon fulfillment of the same continuing professional
- 5 education requirements, on the same renewal schedule and
- 6 subject to the same restrictions and the payment of the same
- 7 fees that are required for the renewal of a certificate under
- 8 section twelve of this article. Any registration not so renewed
- 9 will expire on the thirtieth day of June, two thousand two.

§30-9-16. Substantial equivalency practice privileges.

- 1 (a) An individual whose principal place of business is not
- 2 in this state and who holds an out-of-state certificate has all the
- 3 rights and privileges of a certificate holder of this state without
- 4 the need to obtain a certificate if the other state extends similar
- 5 privileges to a holder of a certificate, and:

- 6 (1) The board has determined by rule that the state that
- 7 issued the out-of-state certificate has certification requirements
- 8 that are substantially equivalent to the certification require-
- 9 ments of the uniform accountancy act; or

10 (2) The board has verified that the individual's qualifica-
11 tions are substantially equivalent to the certification require-
12 ments of the uniform accountancy act.

13 (b) No less than ten days prior to performing or offering to
14 perform any services in the state, an individual seeking to
15 practice under the provisions of this section must file a notice
16 with the board that: (A) Includes the individual's name,
17 principal business address, out-of-state certificate number and
18 state of issuance, and any other information that the board may
19 require by rule; (B) discloses any pending disciplinary action or
20 any past denial, revocation or suspension of the out-of-state
21 certificate; and (C) attaches any fee that the board may require
22 by rule.

23 (c) No later than the first day of July of the second calendar
24 year following the substantial equivalency practitioner's most
25 recent filing of the notice required under subsection (b) of this
26 section or with greater or lesser frequency as the board may
27 require by rule, a substantial equivalency practitioner must file
28 a notice with the board containing the information and attaching
29 the fee, if any, required in subsection (b) of this section if the
30 substantial-equivalency practitioner expects or intends to
31 continue to offer services in the state.

32 (d) Any individual performing or offering to perform any
33 services in the state as a substantial equivalency practitioner is
34 subject to the following:

35 (1) Jurisdiction of the board concerning all matters within
36 the scope of this article;

37 (2) Compliance with the provisions of this article and
38 applicable rules;

39 (3) The appointment of the secretary of state as his or her
40 agent upon whom process may be served in any action or

41 proceeding against the individual arising out of any transaction
42 or operation connected with or incidental to services performed
43 in this state; and

44 (4) The appointment of the state board of accountancy of
45 the state of issuance of his or her out-of-state certificate as his
46 or her agent upon which process may be served in an action or
47 proceeding by the board.

§30-9-17. Issuance and renewal of permits.

1 (a) The board shall issue a permit to a firm that demon-
2 strates that:

3 (1) Each partner, officer, shareholder, member or manager
4 of the firm whose principal place of business is in this state and
5 who performs or offers to perform professional services in this
6 state holds a certificate or a registration; and

7 (2) The firm meets firm ownership requirements.

8 (b) An application for the issuance of a permit must be
9 made in the form specified by the board by rule and must
10 include the following information:

11 (1) The names of all partners, officers, shareholders,
12 members or managers of the firm whose principal place of
13 business is in this state;

14 (2) The location of each office of the firm within this state
15 and the name of the certified public accountant or public
16 accountant in charge of each office; and

17 (3) Any issuance, denial, revocation or suspension of an
18 out-of-state permit.

19 (c) Permits will initially be issued for a period to expire on
20 the thirtieth day of June following the date of issue.

21 (d) The board shall renew a permit for a one-year period
22 beginning on the first day of July of each year after initial
23 issuance in accordance with the requirements for initial
24 issuance of a permit in this section.

25 (e) The board shall charge an application fee for the initial
26 issuance or renewal of a permit in an amount specified by rule.

§30-9-18. Notification of changes in firm ownership; revocation of permit.

1 (a) A permit holder must notify the board in writing, within
2 thirty days after its occurrence, of any change in the identities
3 of partners, officers, shareholders, members or managers whose
4 principal place of business is in this state, any change in the
5 number or location of offices within this state, any change in
6 the identity of the persons in charge of those offices, and any
7 issuance, denial, revocation or suspension of a permit or
8 equivalent designation by any other state.

9 (b) The board shall suspend or revoke the permit of any
10 firm that ceases to meet firm ownership requirements due to
11 changes in firm ownership or personnel due to the death or
12 retirement of a partner, officer, shareholder, member or
13 manager and that fails to take corrective action in the manner
14 and during the time period specified by rule.

§30-9-19. Issuance and renewal of authorizations.

1 (a) Commencing with the first day of July, two thousand
2 one, no person or business entity may provide attest or compila-
3 tion services without having first obtained an authorization
4 issued by the board. An applicant may apply to provide attest
5 services or compilation services or both.

6 (b) Applications for the issuance of authorizations must be
7 made in the form specified by the board by rule.

8 (c) Authorizations will initially be issued for a period to
9 expire on the thirtieth day of June following the date of initial
10 issuance.

11 (d) The board shall issue an authorization to a permit holder
12 that demonstrates that:

13 (1) Any certified public accountant or public accountant
14 who signs or authorizes someone to sign a report on financial
15 statements on behalf of the permit holder meets the competency
16 requirements set forth in the professional standards for those
17 services specified by rule;

18 (2) All attest and compilation services rendered by the
19 permit holder in this state are verified by a certified public
20 accountant or a public accountant; and

21 (3) The permit holder is undergoing a peer review program
22 that conforms with applicable rules.

23 (e) A firm may simultaneously apply for the issuance or
24 renewal of a permit and the issuance or renewal of an authoriza-
25 tion by demonstrating that the firm meets the requirements of
26 section seventeen of this article and subsection (d) of this
27 section.

28 (f) The board shall issue an authorization to an individual
29 practitioner who demonstrates that he or she:

30 (1) Signs attest and compilation reports as a certified public
31 accountant or public accountant, as applicable; and

32 (2) Is undergoing a peer review program that conforms with
33 applicable rules.

34 (g) The board shall renew an authorization for a one year
35 period beginning on the first day of July of each year after

36 initial issuance in accordance with the requirements for initial
37 issuance of an authorization in this section.

38 (h) The board shall charge an application fee for the initial
39 issuance or renewal of an authorization in an amount specified
40 by rule.

**§30-9-20. Refuse to issue or renew; suspension, revocation of
license; disciplinary action.**

1 (a) The board may refuse to issue, refuse to renew, suspend,
2 revoke or limit any license or practice privilege of any licensee,
3 substantial equivalency practitioner or firm and may take
4 disciplinary action against a licensee or substantial equivalency
5 practitioner practicing in this state who, after hearing, has been
6 adjudged by the board as unqualified because of any of the
7 following reasons:

8 (1) Fraud or deceit in obtaining or maintaining a license or
9 substantial equivalency practice privilege;

10 (2) Cancellation, revocation, suspension or refusal to renew
11 an out-of-state certificate, an out-of-state permit or substantial
12 equivalency practice privilege for disciplinary reasons in any
13 other state for any cause other than a failure to pay an annual
14 fee for the renewal of an out-of-state certificate or out-of-state
15 permit in the other state;

16 (3) Failure by any licensee to maintain compliance with
17 requirements for issuance or renewal of a license or to timely
18 notify the board as required under section eighteen of this
19 article;

20 (4) Revocation or suspension of the right of a licensee or
21 substantial equivalency practitioner to practice before any state
22 or federal agency;

23 (5) Dishonesty, fraud, professional negligence in the
24 performance of services as a licensee or substantial equivalency
25 practitioner or in the filing or failure to file the licensee's or
26 substantial equivalency practitioner's own income tax returns,
27 or a willful departure from accepted standards of professional
28 conduct applicable to licensees and substantial equivalency
29 practitioners;

30 (6) Violation of any provision of this article or any rule,
31 including the violation of any professional standard or rule of
32 professional conduct;

33 (7) Conviction of a felony or any crime an element of
34 which is dishonesty or fraud under the laws of the United States
35 or this state, or conviction of any similar crime under the laws
36 of any other state if the underlying act or omission involved
37 would have constituted a crime under the laws of this state;

38 (8) Performance of any fraudulent act by any licensee or
39 substantial equivalency practitioner;

40 (9) Any conduct adversely reflecting upon the licensee's or
41 substantial equivalency practitioner's fitness to perform
42 professional services;

43 (10) Making any false or misleading statement or verifica-
44 tion in support of an application for a license filed by another
45 person or firm; or

46 (11) Engaging in the unlawful practice of law as defined by
47 the West Virginia supreme court of appeals.

48 (b) If the board suspends, revokes, refuses to issue, refuses
49 to renew or limits any license or practice privilege, the board
50 shall give written notice of the denial, including a statement of
51 charges setting forth the reasons for the denial, and notice of the
52 date, time and place for hearing. The hearing must be held in

53 accordance with the provisions of section twenty-two of this
54 article.

55 (c) Disciplinary action includes, but is not limited to, a
56 reprimand, censure, probation, administrative fine not to exceed
57 one thousand dollars per day per violation, and mandatory
58 attendance at continuing professional education seminars.

§30-9-21. Complaints; investigation.

1 (a) Upon receipt of a written complaint filed against any
2 licensee, substantial equivalency practitioner or firm, the board
3 shall provide a copy of the complaint to the licensee, substantial
4 equivalency practitioner or firm.

5 (b) The board may investigate the complaint. If the board
6 finds upon investigation that probable cause exists that the
7 licensee, substantial equivalency practitioner or firm has
8 violated any provision of this article or the rules, the board shall
9 serve the licensee, substantial equivalency practitioner or firm
10 with a written statement of charges and a notice specifying the
11 date, time and place of hearing. The hearing must be held in
12 accordance with section twenty-two of this article.

13 (c) The board may review the publicly available profes-
14 sional work of a licensee, substantial equivalency practitioner,
15 or firm on a general and random basis, without any requirement
16 of a formal complaint or suspicion of impropriety. If the board
17 discovers reasonable grounds, the board may conduct an
18 investigation and upon its own motion, may file a written
19 statement of charges, including a notice specifying the date,
20 time and place of hearing, against the licensee, firm or substan-
21 tial equivalency practitioner.

**§30-9-22. Hearing; judicial review; notification to out-of-state
board of accountancy; costs of proceedings.**

1 (a) A hearing on a statement of charges must be held in
2 accordance with the provisions for hearing set forth in section
3 eight, article one of this chapter and procedures specified by
4 rule.

5 (b) Any licensee, substantial equivalency practitioner or
6 firm adversely affected by any decision of the board entered
7 after a hearing may obtain judicial review of the decision in
8 accordance with section four, article five, chapter twenty-nine-a
9 of this code, and may appeal any ruling resulting from judicial
10 review in accordance with article five, chapter twenty-nine-a of
11 this code.

12 (c) If the board renders a decision refusing to issue, refusing
13 to renew, suspending or revoking a license, or the board takes
14 disciplinary action, the board shall determine whether the
15 licensee, substantial equivalency practitioner or firm holds an
16 out-of-state certificate or permit, and if so, the board shall
17 notify the board of accountancy of the state of issuance of its
18 decision in the manner, under the circumstances and within the
19 time specified by rule.

20 (d) In addition to other sanctions imposed, the board shall
21 require a licensee, firm or substantial equivalency practitioner
22 to pay the costs of the proceeding.

§30-9-23. Reinstatement.

1 If the board has suspended, revoked or refused to renew a
2 license or has revoked the practice privileges of a substantial
3 equivalency practitioner, the licensee, firm or substantial
4 equivalency practitioner against whom action has been taken
5 under the provisions of this article, must be afforded an
6 opportunity to demonstrate the qualifications to resume
7 practice. The application for reinstatement must be in writing
8 and is subject to the procedures specified by rule.

§30-9-24. Licensees' working papers; clients' records.

1 (a) Any statement, record, schedule, working paper, and
2 memorandum made by a licensee or a partner, shareholder,
3 officer, director, member, manager or employee of a licensee
4 incident to, or in the course of, rendering services to a client
5 while a licensee, remains the property of the licensee in the
6 absence of an express agreement between the licensee and the
7 client to the contrary: *Provided*, That this subsection does not
8 apply to a report submitted by the licensee to the client or to a
9 statement, record, schedule, working paper or memorandum
10 provided by the client to the licensee or to a partner, share-
11 holder, officer, director, member, manager or employee of a
12 licensee.

13 (b) No statement, record, schedule, working paper, or
14 memorandum made by a licensee or a partner, shareholder,
15 officer, director, member, manager or employee of a licensee
16 incident to, or in the course of, rendering services to a client
17 while a licensee may be sold, transferred or bequeathed,
18 without the consent of the client or the client's personal
19 representative or assignee, to anyone other than one or more
20 surviving partners, stockholders, members or new partners, new
21 stockholders, or new members of the licensee, or any combined
22 or merged firm or successor in interest to the licensee.

23 (c) Nothing in this section may be construed to prohibit any
24 temporary transfer of a workpaper or other material necessary
25 in the course of carrying out a peer review or as otherwise
26 interfering with the disclosure of information as authorized by
27 rule.

28 (d) In addition to any statement, record, schedule, working
29 paper, memorandum or report required to be furnished or
30 returned to a client in accordance with subsection (a) of this
31 section, a licensee shall furnish to a client or former client, upon

32 request made within a reasonable time after original issuance of
33 the document in question:

34 (1) A copy of the tax return of the client;

35 (2) A copy of any report or other document issued by the
36 licensee to or for the client and not formally withdrawn or
37 disavowed by the licensee prior to the request;

38 (3) A copy of any working paper, to the extent that it would
39 ordinarily constitute part of the client's records and is not
40 otherwise available to the client; and

41 (4) Any accounting or other record belonging to, or
42 obtained from or on behalf of, a client that the licensee removed
43 from the client's premises or received for the client's account:
44 *Provided*, That a licensee may make and retain copies of the
45 documents of the client when they form the basis for work done
46 by the licensee.

47 (e) Nothing in this section requires a licensee to keep any
48 workpaper beyond the period prescribed in any other applicable
49 statute.

§30-9-25. Commissions, referral fees and contingent fees.

1 (a) To the extent specified by rule, a licensee may for a
2 contingent fee represent a client before a taxing authority within
3 the scope of practice of public accounting: *Provided*, That this
4 provision may not be construed either to limit or to expand the
5 scope of practice of public accounting, and may not be con-
6 strued to permit the unauthorized practice of law.

7 (b) All agreements or arrangements in which a licensee is
8 to be paid a commission, referral fee or contingent fee must be
9 in writing, state the method by which the fee is to be deter-
10 mined, must be signed by both the licensee and the client, and

11 must be delivered to the client before the performance of any
12 services or the delivery of any product to which the commis-
13 sion, referral fee or contingent fee relates. A contingent fee
14 arrangement must state the method of calculation of the fee,
15 including the percentage or percentages which accrue to the
16 licensee in the event of all foreseeable outcomes, the expenses
17 to be deducted from any recovery, collection or other amount
18 on which the fee may be based, and whether the expenses are to
19 be deducted before or after the contingent fee is calculated.

§30-9-26. Unlawful acts.

1 (a) No authorization holder or substantial equivalency
2 practitioner may perform attest or compilation services in a
3 manner other than pursuant to the statements on standards
4 relating to those services specified by rule.

5 (b) (1) No licensee or substantial equivalency practitioner
6 may, for a commission or referral fee, recommend or refer to a
7 client any product or service or refer any product or service to
8 be supplied by a client, or perform for a contingent fee any
9 professional services for or receive a referral fee, commission
10 or contingent fee from a client for whom the licensee, the
11 substantial equivalency practitioner or any firm with which
12 either of them works or associates or any firm in which either
13 of them owns an interest performs for that client:

14 (A) An audit or review of a financial statement;

15 (B) A compilation of a financial statement when the
16 licensee or substantial equivalency practitioner expects, or
17 reasonably might expect, that a third party will use the financial
18 statement and the compilation report does not disclose a lack of
19 independence; or

20 (C) An examination of prospective financial information.

21 (2) The prohibition in subdivision one of this subsection
22 applies only during the period in which the licensee or substan-
23 tial equivalency practitioner is engaged to perform any of the
24 services listed in subdivision (1) of this subsection and the
25 period covered by any historical financial statements involved
26 in any of those listed services.

27 (c) No licensee or substantial equivalency practitioner may
28 for a contingent fee prepare an original or amended tax return
29 or claim for a tax refund or serve as an expert witness.

30 (d) No licensee may use a professional or firm name or
31 designation that: (1) Is deceptive or misleading about the legal
32 form of the firm, or about the persons who are partners,
33 officers, members, managers or shareholders of the firm, or
34 about any other matter; or (2) contains a name or term other
35 than past or present partners, officers, members, managers or
36 shareholders of the firm or of a predecessor firm engaged in the
37 practice of accounting.

38 (e) No person or firm that does not hold an authorization to
39 perform attest services may perform or offer to perform attest
40 services, and no person or firm that does not hold an authoriza-
41 tion to perform compilation services may perform or offer to
42 perform compilation services.

43 (f) No individual practitioner who holds an authorization
44 may perform or offer to perform attest services for a client of
45 his or her employer through or on behalf of his or her employer.

46 (g) No person who is not a certified public accountant, a
47 public accountant or a substantial equivalency practitioner may:

48 (1) Issue a report on financial statements of any other
49 person, business entity, or governmental unit or otherwise
50 render or offer to render any attest or compilation service:
51 *Provided*, That this subdivision does not prohibit any act of a

115 may lead a reasonable person to believe that the person is a
116 certified public accountant or the holder of an out-of-state
117 certificate; or

118 (10) Assume or use the title "public accountant," the
119 abbreviation "PA," or any other title, designation, word,
120 combination of letters, abbreviation, sign, card or device that
121 may lead a reasonable person to believe that the person is a
122 public accountant.

123 (h) No business entity that does not hold a permit may
124 assume or use the designations "certified public accountants,"
125 "CPA firm," "public accountants," or "PA firm" or the abbrevi-
126 ations "CPAs," or "PAs," or any other title, designation, word,
127 combination of letters, abbreviation, sign, card or device that
128 may lead a reasonable person to believe that the business entity
129 is a firm or holds a permit.

130 (i) The display or uttering by a person of any printed,
131 engraved or written instrument, bearing the name of the person
132 in conjunction with any of the claims, titles, words or phrases
133 listed in this section is, for purposes of this section, prima facie
134 evidence that the person has engaged in the acts.

§30-9-27. Injunctions against unlawful acts.

1 When, as a result of an investigation under this article or
2 otherwise, the board or any other interested person believes that
3 any person or business entity has engaged, is engaging, or is
4 about to engage in any acts or practices that constitute or will
5 constitute a violation of section twenty-six of this article, the
6 board or any other interested person may make application to
7 any court of competent jurisdiction for an order enjoining the
8 acts or practices, and upon a showing that the person or
9 business entity has engaged or is about to engage in any act or

10 practice, an injunction, restraining order, or another appropriate
11 order may be granted by the court without bond.

§30-9-28. Criminal proceedings; penalties.

1 (a) When, by reason of an investigation under section
2 twenty-one of this article or otherwise, the board has reason to
3 believe that any person or firm has knowingly engaged in acts
4 or practices that constitute a violation of section twenty-six of
5 this article, the board may bring its information to the attention
6 of the attorney general or other appropriate law-enforcement
7 officer who may cause appropriate criminal proceedings to be
8 brought thereon.

9 (b) Any person or firm who knowingly violates any
10 provision of section twenty-six of this article is guilty of a
11 misdemeanor and, upon conviction thereof, shall be fined not
12 more than one thousand dollars or imprisoned in the county or
13 regional jail not more than one year, or both fined and impris-
14 oned.

§30-9-29. Single act evidence of practice.

1 In any action or proceeding brought under sections twenty-
2 seven or twenty-eight of this article or any proceeding initiated
3 under section twenty-one of this article, evidence of the
4 commission of a single act prohibited by this article is sufficient
5 to justify a penalty, injunction, restraining order or conviction,
6 respectively, without evidence of a general course of conduct.

§30-9-30. Accounting corporations.

1 (a) All accounting corporations created prior to the first day
2 of July, two thousand one, are hereby continued.

3 (b) On or after the first day of July, two thousand one, one
4 or more certified public accountants or public accountants may

5 organize and become a shareholder or shareholders of an
6 accounting corporation domiciled within this state under the
7 terms and conditions and subject to the limitations and restric-
8 tions specified by rule.

9 (c) When the secretary of state receives a certification of
10 authorization to act as an accounting corporation, he or she
11 shall attach the authorization to the corporation application and,
12 upon compliance with the applicable provisions of chapter
13 thirty-one of this code, the secretary of state shall issue to the
14 incorporators a certificate of incorporation for the accounting
15 corporation.

§30-9-31. Inapplicability of article.

1 (a) Nothing contained in this article may be construed to
2 prevent any person from describing himself or herself as an
3 “accountant” or a “bookkeeper” or from stating that he or she
4 practices accountancy or bookkeeping; nor, subject to certifica-
5 tion and registration requirements herein imposed, may this
6 article be construed to prevent any person from: (1) Performing
7 services involving the use of accounting skills; (2) rendering tax
8 services, management advisory or consulting services; (3)
9 keeping of books of account and related accounting records; or
10 (4) preparing, compiling or assembling financial statements
11 without the expression of an assurance.

12 (b) The prohibitions of this section and the other provisions
13 of this article may not be construed to preclude a person or
14 business entity not holding a certificate or registration from
15 using the following or substantially similar language: “I (We)
16 have compiled the accompanying (financial statements) of
17 (name of entity) as of (time period) for the (period) then ended.
18 A compilation is limited to presenting in the form of financial
19 statements information that is the representation of management
20 (owners). I (We) have not audited or reviewed the accompany-

21 ing financial statements and, accordingly, do not express an
22 opinion or any other form of assurance on them. Management
23 has elected to omit substantially all (or certain) required
24 disclosures (and the statement of changes in financial position).
25 If omitted disclosures were included in the financial statements,
26 they might influence the user's conclusions about the (entity's)
27 financial position, results of operations and changes in financial
28 position. Accordingly, these financial statements are not
29 designed for those who are not informed about these matters."

30 (c) Nothing contained in this article may be construed to
31 prohibit an employee from furnishing services to his or her
32 employer.

33 (d) Nothing in this article prohibits a practicing attorney or
34 group of attorneys from preparing or presenting records or
35 documents customarily prepared by an attorney or group of
36 attorneys in connection with the attorney's professional work
37 in the practice of law.

§30-9-32. Termination date.

1 The board shall terminate on the first day of July, two
2 thousand five, pursuant to the provisions of article ten, chapter
3 four of this code.

CHAPTER 234

**(S. B. 720 — By Senators Wooton, Caldwell, Deem, Facemyer,
Fanning, Hunter, Kessler, Minard, Mitchell, Ross and Rowe)**

[Passed April 14, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article thirteen-a, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the board of examiners of land surveyors to promulgate emergency and legislative rules.

Be it enacted by the Legislature of West Virginia:

That section four, article thirteen-a, 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 13A. LAND SURVEYORS.

§30-13A-4. Powers and duties of board; funds.

1 (a) The board shall have the power and duty to:

2 (1) Examine applicants and determine their eligibility for a
3 license to engage in the practice of land surveying;

4 (2) Prepare, conduct and grade an apt and proper written,
5 oral or written and oral examination of applicants for a license
6 and determine the satisfactory passing score thereon;

7 (3) Promulgate reasonable rules implementing the provi-
8 sions of this article and the powers and duties conferred upon
9 the board hereby, all of which reasonable rules shall be promul-
10 gated in accordance with the provisions of article three, chapter
11 twenty-nine-a of this code;

12 (4) Issue, renew, deny, suspend or revoke licenses to
13 engage in the practice of land surveying in accordance with the
14 provisions of this article;

15 (5) Investigate alleged violations of the provisions of this
16 article, reasonable rules promulgated hereunder and orders and
17 final decisions of the board and take appropriate disciplinary

18 action against any licensee for the violation thereof or institute
19 appropriate legal action for the enforcement of the provisions
20 of this article, reasonable rules promulgated hereunder and
21 orders and final decisions of the board or take such disciplinary
22 action and institute such legal action;

23 (6) Keep accurate and complete records of its proceedings,
24 certify the same as may be appropriate and prepare, from time
25 to time, a list showing the names and addresses of all licensees;

26 (7) Take such other action as may be reasonably necessary
27 or appropriate to effectuate the provisions of this article; and

28 (8) Establish standards to evaluate surveying curricula as it
29 relates to the practice of land surveying under the provisions of
30 this article and to determine the amount of experience required
31 under section five of this article which may be substituted for
32 a particular curriculum.

33 (b) All moneys paid to the board shall be accepted by a
34 person designated by the board and deposited by him with the
35 treasurer of the state and credited to an account to be known as
36 the "board of examiners of land surveyors fund". All of the
37 reasonable compensation of the members of the board, the
38 reimbursement of all reasonable and necessary expenses
39 actually incurred by such members and all other costs and
40 expenses incurred by the board in the administration of this
41 article shall be paid from such fund, and no part of the state's
42 general revenue fund shall be expended for this purpose.

43 (c) The Legislature finds that an emergency situation exists
44 and, therefore, the board is hereby authorized to establish by
45 emergency rule, pursuant to the provisions of article three-a,
46 chapter twenty-nine-a of this code, a rule to effectuate the
47 purpose of this article, including, but not limited to, continuing
48 education.

CHAPTER 235

(H. B. 2599 — By Delegates Compton, Fahey,
Boggs, C. White, Fox, Marshall and Poling)

[Passed April 12, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, four, five, six, seven and eight of article twenty-three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section fourteen, all relating to the board of examiners of radiologic technologists; providing for annual license renewals; allowing the board to establish renewal fees; increasing the number of board members; revising the powers and duties of the board; allowing compensation of members; and continuing the board of examiners of radiologic technologists.

Be it enacted by the Legislature of West Virginia:

That sections two, four, five, six, seven and eight of article twenty-three, 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 fourteen, all to read as follows:

ARTICLE 23. RADIOLOGIC TECHNOLOGISTS.

§30-23-2. Definitions.

§30-23-4. Creation of board of examiners of radiologic technologists; members; appointment by governor; qualifications; terms; vacancies; officers; oath; compensation; general provisions.

§30-23-5. Board of examiners; powers and duties; funds of board.

§30-23-6. Qualifications of applicants; exceptions; applications; fee.

§30-23-7. Issuance of license; renewal of license; renewal fee.

§30-23-8. Temporary permits.

§30-23-14. Termination of Board.

§30-23-2. Definitions.

1 Unless the context in which used clearly requires a different
2 meaning, as used in this article:

3 (a) "Board" means the West Virginia radiologic technology
4 board of examiners.

5 (b) "License" means a license granted and issued by the
6 board for the practice of radiologic technology.

7 (c) "Licensed practitioner" means a person licensed to
8 practice medicine, chiropractic, podiatry, osteopathy or
9 dentistry.

10 (d) "Licensee" means any person holding a license or a
11 temporary permit issued under the provisions of this article.

12 (e) "Radiologic technologist" means a person, other than a
13 licensed practitioner who applies ionizing radiation or assists in
14 the application of ionizing radiation to human beings for
15 diagnostic or therapeutic purposes under the supervision of a
16 licensed practitioner.

17 (f) "Radiologic technology" means the application of
18 ionizing radiation or assisting in the application of ionizing
19 radiation to human beings for diagnostic or therapeutic pur-
20 poses under the supervision of a licensed practitioner.

21 (g) "Radiologist" means a licensed practitioner who
22 specializes in the use of ionizing radiation for the diagnosis or
23 treatment of disease.

24 (h) "Radiology resident" means a licensed practitioner who
25 is in training to become a radiologist and who uses ionizing
26 radiation in the diagnosis or treatment of disease, under the
27 supervision of a radiologist.

28 (i) "Supervision" means responsibility for and control of
29 quality, radiation safety and technical aspects in the application
30 of ionizing radiation of human beings for diagnostic or thera-
31 peutic purposes.

32 (j) "Technology" hereinafter relates to radiologic technol-
33 ogy.

§30-23-4. Creation of board of examiners of radiologic technologists; members; appointment by governor; qualifications; terms; vacancies; officers; oath; compensation; general provisions.

1 There is hereby created a West Virginia radiologic technol-
2 ogy board of examiners, hereinafter called the board. The
3 governor shall appoint the members of such board, by and with
4 the advice and consent of the Senate. The board shall consist of
5 nine members, composed of one member from the division of
6 radiologic health of the West Virginia state department of
7 health, two lay members, three licensed practitioners, two of
8 whom shall be radiologists, and three radiologic technologists
9 who are licensed hereunder.

10 Each member shall be appointed for a term of three years
11 and shall serve until a successor has been appointed and has
12 qualified. The terms shall be staggered in accordance with the
13 initial appointments under prior enactments of this article. All
14 members of the board shall be residents of West Virginia. A
15 member may succeed himself. Vacancies shall be filled by
16 appointment by the governor for the unexpired term. Before
17 entering upon the performance of his duties, each member shall

18 take and subscribe to the oath required by section five, article
19 four of the constitution of this state.

20 The board shall elect from its membership a chairman and
21 secretary who shall serve at the will and pleasure of the board.
22 A majority of the members of the board constitutes a quorum,
23 and meetings shall be held at the call of the chairman or upon
24 the written request of four members at such time and place as
25 designated in such call or request, and, in any event, the board
26 shall meet at least twice annually to conduct business as may
27 come before it. The board shall hold its first meeting within
28 thirty days after the appointment of the members. The members
29 of the board shall receive the same compensation and expense
30 reimbursement for their services as is paid to members of the
31 Legislature for interim duties as recommended by the citizens
32 legislative compensation commission and authorized by law for
33 each day or portion thereof engaged in the discharge of official
34 duties. Any member may be removed by the governor in case
35 of incompetency, neglect of duty, gross immorality or malfea-
36 sance in office.

§30-23-5. Board of examiners; powers and duties; funds of board.

1 (a) The board shall:

2 (1) Propose legislative rules implementing the provisions
3 of this article and the powers and duties conferred upon the
4 board in accordance with the provisions of article three, chapter
5 twenty-nine-a of this code;

6 (2) Determine applicants eligibility for a license or tempo-
7 rary permit to practice radiologic technology;

8 (3) Issue, renew, deny, suspend or revoke licenses and
9 temporary permits to engage in the practice of radiologic
10 technology in accordance with the provisions of this article and,
11 in accordance with the administrative procedures hereinafter

12 provided, review, affirm, reverse, vacate or modify its order
13 with respect to any such denial, suspension or revocation;

14 (4) Investigate alleged violations of provisions of this
15 article, reasonable rules and regulations promulgated hereunder
16 and orders and final decisions of the board and take appropriate
17 disciplinary action against any licensee for the violation thereof
18 or institute appropriate legal action for the enforcement of the
19 provisions of this article, rules and regulations promulgated
20 hereunder and orders and final decisions of the board;

21 (5) Employ, direct, discharge and define the duties of full
22 or part-time professional, clerical or other personnel necessary
23 to effectuate the provisions of this article;

24 (6) Keep accurate and complete records of its proceedings,
25 certify the same as may be appropriate, and prepare, from time
26 to time, a list showing the names and addresses of all licensees;

27 (7) Provide standards for approved schools of technology,
28 procedures for obtaining and maintaining approval, and
29 procedures of revocation of approval where standards are not
30 maintained: *Provided*, That such standards for approved schools
31 meet at least the minimal requirements of the American society
32 of radiologic technologists;

33 (8) Whenever it deems it appropriate, confer with the
34 attorney general or his assistants in connection with all legal
35 matters and questions; and

36 (9) Take such other action as may be reasonably necessary
37 or appropriate to effectuate the provisions of this article.

38 (b) All moneys paid to the board shall be accepted by a
39 person designated by the board and deposited by him with the
40 treasurer of the state and credited to an account to be known as
41 the "board of examiners of radiologic technologist fund." The

42 reimbursement of all reasonable and necessary expenses
43 actually incurred by members of the board and all other costs
44 and expenses incurred by the board in the administration of this
45 article shall be paid from such fund, and no part of the state's
46 general revenue fund shall be expended for this purpose.

**§30-23-6. Qualifications of applicants; exceptions; applications;
fee.**

1 (a) To be eligible for a license to practice radiologic
2 technology the applicant must:

3 (1) Be of good moral character;

4 (2) Have completed four years of high school education or
5 its equivalent;

6 (3) Have successfully completed a minimum twenty-four-
7 month course in radiologic study in a school of radiologic
8 technology approved by the board;

9 (4) Have passed the examination prescribed by the board,
10 which examination shall cover the basic subject matter of
11 radiologic technology, skills and techniques; and

12 (5) Not have been convicted of a felony in any court in this
13 state or any federal court in this or any other state within ten
14 years preceding the date of application for registration, which
15 conviction remains unreversed; and not have been convicted of
16 a felony in any court in this state or any federal court in this or
17 any other state at any time if the offense for which the applicant
18 was convicted related to the practice of radiologic technology,
19 which conviction remains unreversed.

20 (b) Any person who holds a license or certificate, including
21 the American registry of radiologic technologists, to practice
22 radiologic technology issued by any other state, the require-

23 ments for which license or certificate are found by the board to
24 be at least equal to those provided in this article, shall be
25 eligible for a license to practice radiologic technology in this
26 state without examination.

27 (c) The following persons are not required to obtain a
28 license in accordance with the provisions of this article:

29 (1) A technology student enrolled in or attending an
30 approved school of technology who as part of his or her course
31 of study applies ionizing radiation to a human being under the
32 supervision of a licensed practitioner;

33 (2) A person acting as a dental assistant who under the
34 supervision of a licensed dentist operates only radiographic
35 dental equipment for the sole purpose of dental radiography;

36 (3) A person engaged in performing the duties of a technol-
37 ogist in the person's employment by an agency, bureau or
38 division of the government of the United States;

39 (4) Any licensed practitioner, radiologist or radiology
40 resident; and

41 (5) Any person who demonstrates to the board that as of the
42 first day of July, one thousand nine hundred ninety-nine, he or
43 she:

44 (A) Has engaged in the practice of radiologic technology
45 for the limited purpose of performing bone densitometry in this
46 state for five or more years;

47 (B) Practices under the supervision of a licensed practitio-
48 ner; and

49 (C) Has received a densitometry technologist degree
50 certified by the international society for clinical densitometry.

51 (d) Any applicant for any such license shall submit an
52 application therefor at such time (subject to the time limitation
53 set forth in subsection (d) of this section), in such manner, on
54 such forms and containing such information as the board may
55 from time to time by legislative rule prescribe, and pay to the
56 board a license fee, which fee shall be returned to the applicant
57 if the license application is denied.

§30-23-7. Issuance of license; renewal of license; renewal fee.

1 Whenever the board finds that an applicant meets all the
2 requirements of this article for a license to engage in the
3 practice of radiologic technology, it shall forthwith issue to him
4 such license; and otherwise the board shall deny the same. The
5 license is valid for a period of one year from the date issued and
6 shall be renewed every year without examination upon applica-
7 tion for renewal on a form prescribed by the board and payment
8 to the board of a renewal fee established by legislative rule:
9 *Provided*, That the board may deny an application for renewal
10 for any reason which would justify the denial of an original
11 application for a license.

§30-23-8. Temporary permits.

1 Upon proper application the board may issue a temporary
2 permit to engage in the practice of radiologic technology in this
3 state to an applicant who meets the qualifications of subdivi-
4 sions (1), (2), (3) and (5), subsection (a), section six of this
5 article, pending examination of such applicant. Temporary
6 permits will expire as provided by legislative rule.

§30-23-14. Termination of Board.

1 The board of examiners of radiologic technologists shall be
2 terminated pursuant to the provisions of article ten, chapter four
3 of this code, on the first day of July, two thousand ten, unless
4 sooner terminated, continued or reestablished pursuant to the
5 provisions of such article.

CHAPTER 236

**(S. B. 419 — By Senators Bailey, Craig, Fanning,
Sharpe, Love, McCabe, Mitchell, Rowe, Hunter,
Oliverio, Wooton, Sprouse, McKenzie and Redd)**

[Passed April 12, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, seven, eight and fourteen, article thirty-five, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section two-a, all relating to the board of examiners for licensed dietitians; defining a scope of practice; terms of board members; compensation of board members; license fees, renewal fees and reinstatement fees may be established by rule; penalties; and removing limitation on reimbursement of expenses.

Be it enacted by the Legislature of the West Virginia:

That sections two, three, seven, eight and fourteen, article thirty-five, 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 two-a, all to read as follows:

ARTICLE 35. BOARD OF DIETITIANS.

§30-35-2. Definitions.

§30-35-2a. Scope of practice.

§30-35-3. Board of licensed dietitians.

§30-35-7. Qualifications; licensure; examinations; waivers and fees.

§30-35-8. Renewal of licenses; reinstatement; fees; penalties; inactive lists.

§30-35-14. Prohibitions and penalties.

§30-35-2. Definitions.

1 As used in this article, the following terms have the mean-
2 ings ascribed to them:

3 (a) "Board" means the West Virginia board of licensed
4 dietitians;

5 (b) "Commission on dietetic registration" means the com-
6 mission on dietetic registration that is a member of the national
7 commission for health certifying agencies;

8 (c) "Fund" means the board of examiners for dietitians'
9 administrative fund created pursuant to the provisions of section
10 five of this article;

11 (d) "Licensed dietitian" means any person who has obtained
12 a license to practice as a licensed dietitian from the West Vir-
13 ginia board of licensed dietitians;

14 (e) "Medical nutrition therapy" or "nutrition therapy" means
15 nutritional diagnostic assessment and nutrition therapy services
16 for the purpose of disease management; and

17 (f) "Registered dietitian" means a person registered by the
18 commission on dietetic registration.

§30-35-2a. Scope of practice.

1 (a) The primary scope of practice of licensed dietitians is the
2 provision of medical nutrition therapy. Licensed dietitians may
3 also perform other nutrition-related services to promote the
4 general health, well-being and the prevention of chronic diseases
5 or conditions.

6 (b) Nothing in this article may be construed to prohibit or
7 otherwise limit the practice of a profession by persons who are
8 licensed, certified or registered under the laws of this state and

9 who are performing services within their authorized scope of
10 practice.

§30-35-3. Board of licensed dietitians.

1 (a) There is continued the West Virginia board of licensed
2 dietitians. The board consists of five members who shall be
3 appointed by the governor, by and with the advice and consent
4 of the Senate. The governor shall make appointments from a list
5 of not less than eight names submitted to the governor by the
6 West Virginia dietetic association. Each member of the board
7 shall be a citizen of the United States and a resident of this state.
8 Four members shall have experience as a registered or licensed
9 dietitian for a minimum of three years preceding the date of
10 appointment. One member of the board shall be a lay person
11 who is not a registered or licensed dietitian and not subject to
12 the practice requirements of this subsection.

13 (b) The governor shall appoint members of the board for
14 overlapping terms of four years: *Provided*, That each member
15 shall serve no more than two consecutive four-year terms: *Pro-*
16 *vided, however*, That appointments to fill a vacancy may not be
17 considered as one of two consecutive terms: *Provided further*,
18 That terms in effect on the effective date of this section shall be
19 considered as one of two consecutive terms.

20 (c) In the event a board member is unable to complete a
21 term, the governor shall appoint a person with similar qualifica-
22 tions to complete the unexpired term. Each vacancy occurring
23 on the board shall be filled by appointment within sixty days
24 after the vacancy is created.

25 (d) Each member of the board may receive compensation
26 for attendance at official meetings not to exceed the amount paid
27 to members of the Legislature for their interim duties as recom-
28 mended by the citizens legislative compensation commission
29 and authorized by law and may be reimbursed for actual and

30 necessary expenses incurred for each day or portion thereof
31 engaged in the discharge of official duties in a manner consistent
32 with guidelines of the travel management office of the depart-
33 ment of administration.

34 (e) Annually, the members shall elect a chair, vice chair and
35 secretary. The chair shall preside over the meetings and hearings
36 of the board. The vice chair shall assume the chair's duties in the
37 absence of the chair. All meetings shall be general meetings for
38 the consideration of any matter which may properly come before
39 the board. A majority of the board constitutes a quorum for the
40 transaction of business. The board shall meet at least once a year
41 and at such other times and places as it may determine; and shall
42 meet on the call of the chair. It is the duty of the chair to call a
43 meeting of the board on the written request of three members of
44 the board. The board shall keep an accurate record of all pro-
45 ceedings and maintain the board records. The board may employ
46 personnel necessary to accomplish the performance of its duties:
47 *Provided*, That the board may not expend more than it has avail-
48 able to it solely through the fees established in this article or as
49 established in accordance with section six, article one of this
50 chapter.

§30-35-7. Qualifications; licensure; examinations; waivers and fees.

1 (a) An applicant for a license to engage in practice as a
2 licensed dietitian shall submit to the board written evidence,
3 verified by oath, that he or she:

4 (1) Complies with the code of ethics adopted by the board;

5 (2) Has completed a major course of study in human nutri-
6 tion, dietetics, food systems management or the equivalent
7 thereof and possesses a baccalaureate or post-baccalaureate
8 degree; and

9 (3) Has completed a planned continuous professional experi-
10 ence component in dietetic practice of not less than nine hundred
11 hours under the supervision of a registered or licensed dietitian.

12 (b) Each applicant is required to pass a written examination
13 demonstrating competence in the discipline of dietetics and
14 nutrition. Each written examination may be supplemented by an
15 oral examination. The board shall determine the times and
16 places for examinations.

17 (c) When an applicant successfully passes an examination
18 or examinations, the board shall issue to the applicant a license
19 to engage in practice as a licensed dietitian. In the event an
20 applicant has failed to pass examinations on three occasions, the
21 applicant shall, in addition to the other requirements of this
22 section, present to the board other evidence of his or her qualifi-
23 cations that the board prescribes.

24 (d) Upon application and submission of the applicable fee,
25 the board may waive the examination requirements of this sec-
26 tion and issue a license to practice as a licensed dietitian to an
27 applicant who is registered by the commission on dietetic regis-
28 tration or who has been duly licensed as a nutritionist or dietitian
29 under the laws of another state if the standards for licensing in
30 that state are no less stringent than those required under the
31 provisions of this article.

32 (e) Any person applying for a dietitian license shall submit
33 a fee of fifty dollars or a reasonable fee established by legisla-
34 tive rule pursuant to section six, article one of this chapter with
35 the application to the board, which shall be deposited to the
36 credit of the fund provided in section five of this article.

§30-35-8. Renewal of licenses; reinstatement; fees; penalties; inactive lists.

1 (a) The license of every person licensed under the provisions
2 of this article shall be annually renewed except as otherwise
3 provided by this section. At such times as the board, in its dis-
4 cretion, may determine, the board shall mail a renewal applica-
5 tion to every person whose license was initially granted or
6 renewed during the previous calendar year. All persons seeking
7 renewal shall submit a completed application and a fifty dollar
8 annual renewal fee or a reasonable renewal fee established by
9 legislative rule pursuant to section six, article one of this chap-
10 ter. Upon receipt of the application and fee, the board shall
11 verify the accuracy of the application and, if it is accurate, issue
12 to the applicant a certificate of renewal of the license for the
13 current year. The certificate of renewal entitles its holder to
14 practice dietetics for the period stated on the certificate of re-
15 newal.

16 (b) Any licensee who allows his or her license to lapse by
17 failing to renew for a period not exceeding three years may be
18 reinstated by the board upon receipt of a satisfactory explanation
19 for the failure to renew his or her license and payment of the
20 annual renewal fee plus a reinstatement fee of twenty-five dol-
21 lars or a reasonable reinstatement fee established by legislative
22 rule pursuant to section six, article one of this chapter.

23 (c) Any person allowing his or her license to lapse for a
24 period exceeding three years is required, to be reinstated as a
25 licensed dietitian, to pass a written examination established by
26 the board and to pay to the board a licensing fee of fifty dollars
27 or a reasonable licensing fee established by legislative rule
28 pursuant to section six, article one of this chapter.

29 (d) Any person engaged in the practice of licensed dietetics
30 during the time his or her license has lapsed is in violation of the
31 provisions of this article and is subject to the penalties provided
32 in section fourteen of this article.

33 (e) Any licensed dietitian who desires to retire from practice
34 temporarily shall submit a written notice of the retirement to the
35 board. Upon receipt of the notice the board shall place the name
36 of that person upon the inactive list. Any person remaining on
37 the inactive list may not engage in the practice of licensed di-
38 etetics in this state and is not subject to the payment of any
39 renewal fees. Upon submission of an application for renewal of
40 license and payment of the renewal fee for the current year, a
41 licensed dietitian may resume active practice.

§30-35-14. Prohibitions and penalties.

1 (a) It is a misdemeanor for any person, corporation or asso-
2 ciation to:

3 (1) Sell, fraudulently obtain, furnish or assist in selling,
4 fraudulently obtaining or furnishing any dietitian license or
5 license record;

6 (2) Engage in the practice as a licensed dietitian under cover
7 of any diploma, license or record illegally or fraudulently ob-
8 tained;

9 (3) Represent or imply to the public that he or she is autho-
10 rized to use the title "dietitian" or "licensed dietitian" or any
11 other title intended to convey that impression, unless duly li-
12 censed pursuant to the provisions of this article;

13 (4) Engage in the practice as a licensed dietitian during the
14 time his or her license is suspended or revoked; or

15 (5) Otherwise violate any provisions of this article.

16 (b) Any person, corporation or association who violates the
17 provisions of subsection (a) of this section or any rule promul-
18 gated under this article is guilty of a misdemeanor and, upon
19 conviction thereof, shall be fined not less than one hundred
20 dollars nor more than five hundred dollars for each offense.

CHAPTER 237

(Com. Sub. for H. B. 2567 — By Delegates Kuhn, Tucker,
Hatfield, Perdue, Prunty, Angotti and Overington)

[Passed April 3, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article fourteen, chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter thirty of said code by adding thereto a new article, designated article thirty-eight, relating to the real estate appraiser licensing and certification act; requiring real estate appraisers to be licensed; requiring real estate appraisers to be certified in order to perform certain functions; definitions; classifications of appraisers and authority of classifications; classifications and certificate numbers required on documents; corporations; nonresident licensure and certification; consent to service of process; temporary registration; license by reciprocity; board created; appointments, qualifications, terms, oath, removal of members; quorum; meetings; disqualification from participation; compensation; records; employing staff; powers and duties of the board; board funds; rulemaking authority; civil liability for board members; liability limitations for reporting violations to board; applications for license and certification; renewals; suspending, revoking or refusing to issue or renew license or certification; grounds for disciplinary action; disciplinary proceedings; hearings; orders; entry of order without notice and hearing; when administrative law judge or hearing examiner may hold hearing; judicial review; appeals to supreme court of appeals; penalties, fines and imprisonment; requiring proof of license or certification to maintain action for fees; standards of

professional appraisal practice; attorney general opinions and duties; continuation of board.

Be it enacted by the Legislature of West Virginia:

That article fourteen, chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that chapter thirty of said code be amended by adding thereto a new article, designated article thirty-eight, to read as follows:

ARTICLE 38. THE REAL ESTATE APPRAISER LICENSING AND CERTIFICATION ACT.

- §30-38-1. Real estate appraiser license required; exceptions.
- §30-38-2. Short title.
- §30-38-3. Definitions.
- §30-38-4. Classifications of licensure and certification; authority of appraisers; classification and license or certificate number required on all documents; corporations.
- §30-38-5. Licensure and certification of nonresidents; consent to service of process; temporary registration; license by reciprocity.
- §30-38-6. Board created; appointments, qualifications, terms, oath, removal of members; quorum; meetings; disqualification from participation; compensation; records; employing staff.
- §30-38-7. General powers and duties.
- §30-38-8. Board fund; disposition of funds.
- §30-38-9. Rulemaking.
- §30-38-10. Civil liability for board members; liability limitations of professionals reporting to board.
- §30-38-11. Applications for license or certification; renewals.
- §30-38-12. Refusal to issue or renew license or certification; suspension or revocation; grounds for disciplinary action.
- §30-38-13. Disciplinary proceedings.
- §30-38-14. Hearings; orders; entry of order without notice and hearing; judicial review; appeals to supreme court of appeals.
- §30-38-15. Penalties.
- §30-38-16. Collection of appraisal fees.
- §30-38-17. Standards of professional appraisal practice.
- §30-38-18. Attorney general opinions and duties.
- §30-38-19. Continuation of board.

§30-38-1. Real estate appraiser license required; exceptions.

1 (a) It is unlawful for any person, for compensation or
2 valuable consideration, to prepare a valuation appraisal or a
3 valuation appraisal report relating to real estate or real property
4 in this state without first being licensed or certified as provided
5 in this article. This section shall not be construed to apply to
6 persons who do not render significant professional assistance in
7 arriving at a real estate appraisal analysis, opinion or conclu-
8 sion. Nothing in this article may be construed to prohibit any
9 person who is licensed to practice in this state under any other
10 law from engaging in the practice for which he or she is
11 licensed.

12 (b) No person other than a person licensed or certified
13 under this article may use the title of licensed appraiser or
14 certified appraiser or any title, designation or abbreviation
15 likely to create the impression that the person is licensed or
16 certified by the state.

17 (c) This article does not apply to:

18 (1) A real estate broker or salesperson licensed by this state
19 who, in the ordinary course of his or her business, gives an
20 opinion to a potential seller or third party as to the recom-
21 mended listing price of real estate or an opinion to a potential
22 purchaser or third party as to the recommended purchase price
23 of real estate, when this opinion as to the listing price or the
24 purchase price is not to be referred to as an appraisal, no
25 opinion is rendered as to the value of the real estate and no fee
26 is charged;

27 (2) A casual or drive-by inspection of real estate in connec-
28 tion with a consumer loan secured by the real estate, when the
29 inspection is not referred to as an appraisal, no opinion is
30 rendered as to the value of the real estate and no fee is charged
31 for the inspection;

32 (3) An employee who renders an opinion as to the value of
33 real estate for his or her full-time employer, for the employer's
34 internal use only and performed in the regular course of the
35 employee's position, when the opinion is not referred to as an
36 appraisal and no fee is charged;

37 (4) Appraisals of personal property, including, but not
38 limited to, jewelry, household furnishings, vehicles and
39 manufactured homes not attached to real estate;

40 (5) Any officer or employee of the United States, or of the
41 state of West Virginia or a political subdivision thereof, when
42 the employee or officer is performing his or her official duties:
43 *Provided*, That such individual does not furnish advisory
44 service for compensation to the public or act as an independent
45 contracting party in West Virginia or any subdivision thereof in
46 connection with the appraisal of real estate or real property:
47 *Provided, however*, That this exception shall not apply with
48 respect to federally related transactions as defined in Title XI of
49 the United States Code, entitled "Financial Institutions Reform,
50 Recovery, and Enforcement Act of 1989"; or

51 (6) Any evaluation of the value of real estate serving as
52 collateral for a loan made by a financial institution insured by
53 the federal deposit insurance corporation: *Provided*, That: (A)
54 The amount of the loan is equal to or less than two hundred
55 fifty thousand dollars; (B) the evaluation is used solely by the
56 lender in its records to document the collateral value; (C) the
57 evaluation clearly indicates on its face that it is for the lender's
58 internal use only; (D) the evaluation is not labeled an appraisal;
59 and (E) the evaluation is on a form approved by the board.
60 Individuals performing these evaluations may be compensated
61 for their services. The lender shall notify its customer if it
62 intends to use an unlicensed evaluator and give the customer the
63 opportunity to elect an evaluation, by a certified or licensed
64 appraiser, the cost of which will be paid as agreed between the
65 lender and the customer.

§30-38-2. Short title.

1 This article is known and may be cited as the “Real Estate
2 Appraiser Licensing and Certification Act.”

§30-38-3. Definitions.

1 As used in this article, the following terms have the
2 following meanings:

3 (a) “Appraisal” means an analysis, opinion or conclusion
4 prepared by a real estate appraiser relating to the nature,
5 quality, value or utility of specified interests in, or aspects of,
6 identified real estate or identified real property. An appraisal
7 may be classified by the nature of the assignment as a valuation
8 appraisal, an analysis assignment or a review assignment.

9 (b) “Analysis assignment” means an analysis, opinion or
10 conclusion prepared by a real estate appraiser that relates to the
11 nature, quality or utility of identified real estate or identified
12 real property.

13 (c) “Appraisal foundation” means the appraisal foundation
14 established on the thirtieth day of November, one thousand nine
15 hundred eighty-seven, as a not-for-profit corporation under the
16 laws of Illinois.

17 (d) “Appraisal report” means any communication, written
18 or oral, of an appraisal. An appraisal report may be classified by
19 the nature of the assignment as a “valuation report”, “analysis
20 report” or “review report”. For the purposes of this article, the
21 testimony of an appraiser dealing with the appraiser’s analyses,
22 conclusions or opinions concerning identified real estate or
23 identified real property is considered an oral appraisal report.

24 (e) “Board” means the real estate appraiser licensing and
25 certification board established by the provisions of this article.

26 (f) "Certified appraisal report" means a written appraisal
27 report that is certified by a state licensed or certified real estate
28 appraiser. When a real estate appraiser identifies an appraisal
29 report as "certified", the real estate appraiser must indicate the
30 type of licensure or certification he or she holds. By certifying
31 an appraisal report, a state licensed residential real estate
32 appraiser, a state certified general real estate appraiser or a state
33 certified residential real estate appraiser, represents to the
34 public that the report meets the appraisal standards established
35 by this article.

36 (g) "Certified real estate appraiser" means a person who
37 holds a current, valid certification as a state certified residential
38 real estate appraiser or a state certified general real estate
39 appraiser issued to him or her under the provisions of this
40 article.

41 (h) "Complex appraisal" means an appraisal that: (1) For
42 nonresidential property, relies on all three approaches to value,
43 being the cost approach, the income approach and the sales
44 comparison approach, or does not have the characteristics of a
45 noncomplex appraisal; and (2) for residential property, relies to
46 any significant degree on at least two of the three approaches to
47 value, with one approach being the sales comparison approach,
48 or does not have the characteristics of a noncomplex appraisal.

49 (i) "Cost approach" means an approach to valuing real
50 estate which requires an appraiser to: (1) Develop an opinion of
51 site value by an appropriate appraisal method or technique; (2)
52 analyze comparable cost data as are available to estimate the
53 cost new of the improvements if any; and (3) analyze compara-
54 ble data as are available to estimate the difference between cost
55 new and the present worth of the improvements, also called
56 accrued depreciation.

57 (j) "Income approach" means an approach to valuing real
58 estate which requires an appraiser to: (1) Analyze comparable

59 rental data as are available to estimate the market rental of the
60 property; (2) analyze comparable operating expense data as are
61 available to estimate the operating expenses of the property; (3)
62 analyze comparable data as are available to estimate rates of
63 capitalization or rates of discount; and (4) base projections of
64 future rent and expenses on reasonably clear and appropriate
65 evidence.

66 (k) “Licensed real estate appraiser” means a person who
67 holds a current, valid license as a state licensed residential real
68 estate appraiser issued to him or her under the provisions of this
69 article.

70 (l) “Noncomplex appraisal” means an appraisal for which:
71 (1) There is an active market of essentially identical properties;
72 (2) adequate data is available to the appraiser; (3) adjustments
73 to comparable sales are not large in the aggregate, specifically
74 not exceeding the trading range found in the market of essen-
75 tially identical properties; and (4) for residential properties, the
76 contract sales price falls within the market norm or median
77 sales price for homes or lots within the same area.

78 (m) “Real estate” means an identified parcel or tract of
79 land, including improvements, if any.

80 (n) “Real estate appraisal activity” means the act or process
81 of making an appraisal of real estate or real property and
82 preparing an appraisal report.

83 (o) “Real estate appraiser” means a person who engages in
84 real estate appraisal activity for a fee or other valuable consid-
85 eration.

86 (p) “Real property interests” means one or more defined
87 interests, benefits or rights inherent in the ownership of real
88 estate.

89 (q) "Review assignment" means an analysis, opinion or
90 conclusion prepared by a real estate appraiser that forms an
91 opinion as to the adequacy and appropriateness of a valuation
92 appraisal or an analysis assignment.

93 (r) "Sales comparison approach" means an approach to
94 valuing real estate which requires an appraiser to analyze such
95 comparable sales data as are available to indicate a value
96 conclusion.

97 (s) "Valuation appraisal" means an analysis, opinion or
98 conclusion prepared by a real estate appraiser that estimates the
99 value of an identified parcel of real estate or identified real
100 property at a particular point in time.

**§30-38-4. Classifications of licensure and certification; authority
of appraisers; classification and license or certificate
number required on all documents; corporations.**

1 (a) The three classifications of real estate appraisers are
2 state licensed residential real estate appraiser, state certified
3 residential real estate appraiser and state certified general real
4 estate appraiser.

5 (b) A state licensed residential real estate appraiser is
6 authorized to conduct appraisals of: (1) Complex residential
7 real estate of one to four units having a value of less than two
8 hundred fifty thousand dollars; (2) noncomplex residential real
9 estate of one to four units having a value of less than one
10 million dollars; and (3) nonresidential real estate having a value
11 of less than one hundred thousand dollars.

12 (c) A state certified residential real estate appraiser is
13 authorized to conduct appraisals of residential real estate of one
14 to four units without regard to value or complexity, and
15 nonresidential real estate when the value is less than one
16 hundred thousand dollars.

17 (d) A state certified general real estate appraiser is autho-
18 rized to conduct appraisals of all types of real estate.

19 (e) The board is authorized to establish by legislative rule
20 other classifications of appraiser licensing not prohibited by
21 applicable federal law.

22 (f) An appraiser shall indicate his or her classification and
23 license or certificate number, on all appraisals, statements of
24 qualification, contracts and other instruments, including
25 advertising media.

26 (g) A license or certificate may not be issued under the
27 provisions of this article to a corporation, partnership, firm or
28 group.

29 (h) Nothing contained in this article prohibits any person
30 licensed or certified under this article from engaging in the
31 practice of real estate appraising as a professional corporation
32 in accordance with the provisions of the professional service
33 corporation act of this state.

**§30-38-5. Licensure and certification of nonresidents; consent to
service of process; temporary registration; license
by reciprocity.**

1 (a) A nonresident of this state who has complied with the
2 provisions of subsection (b) of this section may obtain a license
3 or certification as a real estate appraiser in this state by comply-
4 ing with all of the provisions of this article relating to the
5 licensing or certification of real estate appraisers.

6 (b) Each nonresident applicant for licensure or certification
7 and each nonresident registrant for temporary practice within
8 this state shall submit, with his or her application, an irrevoca-
9 ble consent that service of process upon him or her may be
10 made by delivery of the process to the secretary of state if, in an

11 action against the applicant in a court of this state arising out of
12 the applicant's activities as a real estate appraiser in this state,
13 the plaintiff cannot, in the exercise of due diligence, effect
14 personal service upon the applicant.

15 (c) A nonresident of this state who is not licensed by this
16 state but who is licensed in another state, district or territory,
17 may perform one specific assignment relating to the appraisal
18 of real estate or real property in this state, after being approved
19 by the board in accordance with the rule for temporary registra-
20 tion and complying with the provisions of subsection (b) of this
21 section.

22 (d) If the board determines that another state or territory or
23 the District of Columbia has substantially equivalent licensure
24 or certification laws for real estate appraisers, an applicant for
25 licensure or certification in this state who is licensed or certified
26 under the laws of the other state, territory or district may obtain
27 a license or certificate as a real estate appraiser in this state
28 upon the terms and conditions set by the board: *Provided*, That
29 the laws of such state, territory or district accord substantially
30 equal reciprocal rights to a licensed or certified real estate
31 appraiser in good standing in this state, and that disciplinary
32 proceedings are not pending against the applicant in his or her
33 state of licensure or certification.

**§30-38-6. Board created; appointments, qualifications, terms,
oath, removal of members; quorum; meetings;
disqualification from participation; compensation;
records; employing staff.**

1 (a) The West Virginia real estate appraiser licensing and
2 certification board, which consists of nine members appointed
3 by the governor with the advice and consent of the Senate, is
4 continued. Each member shall be a resident of the state of West
5 Virginia. Four members shall be certified real estate appraisers
6 having at least five years' experience in appraisal as a principal

7 line of work immediately preceding their appointment, and
8 shall remain certified real estate appraisers throughout their
9 terms. Two members shall have at least five years' experience
10 in real estate lending as employees of financial institutions.
11 Three members may not be engaged in the practice of real
12 estate appraisal, real estate brokerage or sales or have any
13 financial interest in these practices. No member of the board
14 may concurrently be a member of the West Virginia real estate
15 commission. Not more than two appraiser members may be
16 appointed from each congressional district.

17 (b) Members will be appointed for three-year terms, which
18 are staggered in accordance with the initial appointments under
19 prior enactment of this act. No member may serve for more
20 than three consecutive terms. Before entering upon the perfor-
21 mance of his or her duties, each member shall subscribe to the
22 oath required by section five, article four of the constitution of
23 this state. The governor shall, within sixty days following the
24 occurrence of a vacancy on the board, fill the vacancy by
25 appointing a person who meets the requirements of this section
26 for the unexpired term. Any member may be removed by the
27 governor in case of incompetency, neglect of duty, gross
28 immorality or malfeasance in office.

29 (c) The board shall elect a chairman. A majority of the
30 members of the board constitutes a quorum.

31 (d) The board shall meet at least once in each calendar
32 quarter on a date fixed by the board. The board may, upon its
33 own motion, or shall upon the written request of three members
34 of the board, call additional meetings of the board upon at least
35 twenty-four hours' notice. No member shall participate in a
36 proceeding before the board to which a corporation, partnership
37 or unincorporated association is a party, and of which he or she
38 is or was at any time in the preceding twelve months a director,
39 officer, owner, partner, employee, member or stockholder. A
40 member may disqualify himself or herself from participation in

41 a proceeding for any other cause the member considers
42 sufficient.

43 (e) The appointed members will receive compensation and
44 expense reimbursement in accordance with the provisions of
45 section eleven, article one of this chapter.

46 (f) The board may employ staff as necessary to perform the
47 functions of the board, to be paid out of the board fund created
48 by the provisions of this article. Persons employed by any real
49 estate agent, broker, appraiser or lender, or by any partnership,
50 corporation, association or group engaged in any real estate
51 business, may not be employed by the board.

§30-38-7. General powers and duties.

1 The board shall:

2 (a) Define by rule the type of educational experience,
3 appraisal experience and equivalent experience that will meet
4 the statutory requirements of this article;

5 (b) Establish examination specifications as prescribed
6 herein and provide for appropriate examinations;

7 (c) Approve or disapprove applications for certification and
8 licensure;

9 (d) Define by rule continuing education requirements for
10 the renewal of certifications and licenses;

11 (e) Censure, suspend or revoke licenses and certification as
12 provided in this article;

13 (f) Hold meetings, hearings and examinations;

14 (g) Establish procedures for submitting, approving and
15 disapproving applications;

16 (h) Maintain an accurate registry of the names and ad-
17 dresses of all persons certified or issued a license to practice
18 under this article;

19 (i) Maintain accurate records on applicants and licensed or
20 certified real estate appraisers;

21 (j) Issue to each licensed or certified real estate appraiser a
22 pocket card with the appraiser's name and license or certifica-
23 tion number. Pocket cards are the property of the state of West
24 Virginia and, upon suspension or revocation of the license to
25 practice pursuant to this article, will be returned immediately to
26 the board;

27 (k) Deposit all fees collected by the board to the credit of
28 the West Virginia appraiser licensing and certification board
29 fund established in the office of the state treasurer. The board
30 shall disburse moneys from the account to pay the cost of board
31 operation. Disbursements from the account may not exceed the
32 moneys credited to it;

33 (l) Keep records and make reports as required by article one
34 of this chapter; and

35 (m) Perform any other functions and duties necessary to
36 carry out the provisions of this article.

§30-38-8. Board fund; disposition of funds.

1 (a) The West Virginia appraiser licensing and certification
2 board fund established in the office of the state treasurer is
3 continued.

4 (b) The disposition of all funds received by the board shall
5 be governed by the provisions of section ten, article one of this
6 chapter.

§30-38-9. Rulemaking.

1 (a) The board may propose rules for legislative approval in
2 accordance with the provisions of article three, chapter twenty-
3 nine-a of this code, to provide for:

4 (1) Licensure and certification requirements, including
5 requirements for applications, examinations, reciprocity,
6 temporary permits, apprentice permits and reinstatement;

7 (2) Fees for licenses, renewals of licenses and other
8 services provided by the board;

9 (3) Experience, education and continuing education
10 requirements and approval of courses; and

11 (4) Any other purpose to carry out the requirements of this
12 article.

13 (b) The rule governing appraiser qualifications must include
14 requirements which meet or exceed the education, experience
15 and examination requirements issued or endorsed by the
16 appraisal qualifications board of the appraisal foundation.

17 (c) Any rules in effect as of the passage of this article will
18 remain in effect until amended, modified, repealed or replaced,
19 except that references to provisions of former enactments of
20 this act are interpreted to mean provisions of this article.

**§30-38-10. Civil liability for board members; liability limitations
of professionals reporting to board.**

1 (a) Members of the board will be immune from individual
2 civil liability for actions taken in good faith and without malice,
3 within the scope of their duties as board members.

4 (b) Any person licensed or certified by this board who
5 reports or otherwise provides evidence of violations of this
6 article or the board's rules by another person engaging in real
7 estate appraisal activity to the board, is not liable for making

8 the report if it is made without malice and in the reasonable
9 belief that the report is warranted by the facts known to him or
10 her at the time.

§30-38-11. Applications for license or certification; renewals.

1 (a) An individual who desires to engage in real estate
2 appraisal activity in this state shall make application for a
3 license, in writing, in a form as the board may prescribe. In
4 addition to any other information required, the applicant's
5 social security number will be recorded on the application.

6 (b) To assist the board in determining whether grounds
7 exist to deny the issuance of a license to an applicant, the board
8 may require the fingerprinting of every applicant for an original
9 license.

10 (c) The payment of the appropriate fee must accompany all
11 applications for original certification and renewal of certifica-
12 tion and all applications to take an examination.

13 (d) At the time of filing an application for original certifica-
14 tion or for renewal of certification, each applicant shall sign a
15 pledge to comply with the standards of professional appraisal
16 practice and the ethical rules to be observed by an appraiser.
17 Each applicant shall also certify that he or she understands the
18 types of misconduct, as set forth in this article, for which
19 disciplinary proceedings may be initiated.

20 (e) To obtain a renewal of license or certification under this
21 article, the holder of a current license or certification shall make
22 application and pay the prescribed fee to the board no earlier
23 than one hundred twenty days nor later than thirty days prior to
24 the expiration date of the current license or certification. Each
25 application for renewal must be accompanied by evidence in
26 the form prescribed by the board that the applicant has com-

27 pleted the continuing education requirements for renewal
28 specified in this article and the board's rules.

29 (f) If the board determines that an applicant for renewal has
30 failed to meet the requirements for renewal of license or
31 certification through mistake, misunderstanding, or circum-
32 stances beyond the control of the applicant, the board may
33 extend the term of the applicant's license or certification for a
34 period not to exceed six months upon payment by the applicant
35 of a prescribed fee for the extension. If the applicant for
36 renewal of license or certification satisfies the requirements for
37 renewal during the extension period, the beginning date of his
38 or her renewal license or certificate shall be the day following
39 the expiration of the certificate previously held by the applicant.

40 (g) If a state licensed or certified real estate appraiser under
41 this article fails to renew his or her license or certification prior
42 to its expiration or within any period of extension granted by
43 the board pursuant to this article, the applicant may obtain a
44 renewal of his or her license or certification by satisfying all of
45 the requirements for renewal and filing an application for
46 renewal, accompanied by a late renewal fee, within two years
47 of the date that his or her certification expired.

48 (h) The board may deny the issuance or renewal of a license
49 or certification for any reason enumerated in this article or in
50 the rules of the board, or for any reason for which it may refuse
51 an initial license or certification.

**§30-38-12. Refusal to issue or renew license or certification;
suspension or revocation; grounds for disciplinary
action.**

1 (a) The following acts or omissions are grounds for
2 disciplinary action, and the board may refuse to issue or renew
3 a license or certification, or after issuance may suspend or

4 revoke a license or certification or impose disciplinary sanc-
5 tions for:

6 (1) Procuring or attempting to procure license or certifica-
7 tion under this article by knowingly making a false statement,
8 submitting false information or making a material misrepresenta-
9 tion in an application filed with the board, or procuring or
10 attempting to procure a license or certification through fraud or
11 misrepresentation;

12 (2) Paying money other than the fees provided for by this
13 article to any member or employee of the board to procure a
14 license or certification under this article;

15 (3) An act or omission in the practice of real estate apprais-
16 ing which constitutes dishonesty, fraud or misrepresentation
17 with the intent to substantially benefit the licensee or another
18 person or with the intent to substantially injure another person;

19 (4) Entry of a final civil or criminal judgment against a
20 licensee on grounds of fraud, misrepresentation or deceit in the
21 making of an appraisal of real estate;

22 (5) Conviction, including a conviction based upon a plea of
23 guilty or nolo contendere, of a crime which is substantially
24 related to the qualifications, functions or duties of a person
25 developing real estate appraisals and communicating real estate
26 appraisals to others;

27 (6) Making a false or misleading statement in that portion
28 of a written appraisal report that deals with professional
29 qualifications or in any testimony concerning professional
30 qualifications;

31 (7) Violation of any section of this article, or any rule of the
32 board;

33 (8) Violation of the confidential nature of governmental
34 records to which a licensee gained access through employment
35 or engagement as an appraiser by a governmental agency;

36 (9) Acceptance of a fee that is or was contingent upon the
37 appraiser reporting a predetermined analysis, opinion, or
38 conclusion, or is or was contingent upon the analysis, opinion,
39 conclusion or valuation reached, or upon the consequences
40 resulting from the appraisal assignment;

41 (10) Failing to meet the minimum qualifications for state
42 licensure or certification established by or pursuant to this
43 article; or

44 (11) Failing or refusing without good cause to exercise
45 reasonable diligence, or negligence or incompetence, in
46 developing an appraisal, preparing an appraisal report, or
47 communicating an appraisal.

48 (b) Every person licensed or certified by the board has a
49 duty to report to the board in a timely manner any known or
50 observed violation of this article or the board's rules by any
51 other person licensed or certified by the board.

§30-38-13. Disciplinary proceedings.

1 (a) The board may, upon its own motion, and shall, upon
2 the written complaint of any aggrieved person, cause an
3 investigation to be made with respect to an alleged violation of
4 this article or the rules of the board.

5 (b) The board may revoke, suspend or refuse to renew the
6 license or certificate or otherwise discipline an appraiser, or
7 deny an application, for any of the acts or omissions set forth in
8 this article or in the rules of the board.

9 (c) If an investigation indicates that an appraiser licensed or
10 certified by the board has violated a law or rule, the board shall

11 serve a formal complaint upon the appraiser. The accused party
12 is required to file an answer within twenty days of the date of
13 service.

14 (d) In responding to a complaint, the accused party may
15 admit the allegations of the complaint, deny the allegations of
16 the complaint or otherwise plead. Failure to make a timely
17 response shall be considered an admission of the allegations of
18 the complaint.

19 (e) The board may make informal disposition of the matter,
20 including entering into a consent agreement, or taking one or
21 more of the disciplinary actions set forth in the board's rules.

22 (f) In a disciplinary proceeding based upon a civil judg-
23 ment, the licensee shall be afforded an opportunity to present
24 matters in mitigation and extenuation but may not collaterally
25 attack the civil judgment.

**§30-38-14. Hearings; orders; entry of order without notice and
hearing; judicial review; appeals to supreme court
of appeals.**

1 (a) Subject to the provisions of subsection (c) of this
2 section, the board shall provide notice and hearing to the
3 accused party in advance of the entry of any order. The hearing
4 and the administrative procedures are governed by the provi-
5 sions of article five, chapter twenty-nine-a of this code and the
6 board's rules, and will be held at a time and place set by the
7 board, but may not be held less than thirty or more than ninety
8 days after the notice is given. A hearing may be continued by
9 the board on its own motion or for good cause shown. At any
10 hearing a party may represent himself or herself, or be repre-
11 sented by an attorney admitted to practice before any circuit
12 court of this state.

13 (b) The board has the power and authority to issue subpoe-
14 nas and subpoenas duces tecum, administer oaths and examine
15 any person under oath in connection with any subject relating
16 to duties imposed upon or powers vested in the board.

17 (c) If the board finds that extraordinary circumstances exist
18 which require immediate action, it may without notice or
19 hearing enter an order taking any action permitted by this
20 article. Immediately upon the entry of the order, certified copies
21 shall be served upon all persons affected, who upon demand are
22 entitled to a hearing at the earliest practicable time.

23 (d) If, at the conclusion of the hearing, the board determines
24 that an appraiser has violated any of the provisions of this
25 article or the board's rules, it shall prepare a formal decision
26 containing findings of fact, conclusions of law, and disciplinary
27 actions to be taken.

28 (e) The board may elect to have an administrative law judge
29 or hearing examiner conduct the hearing. If the board makes
30 this election, the administrative law judge or hearing examiner
31 shall present a decision containing recommended findings of
32 fact, conclusions of law, and appropriate disciplinary actions to
33 be taken. The board may accept, reject or modify the decision
34 of the administrative law judge or hearing examiner.

35 (f) Any party adversely affected by a final order or decision
36 made by the board after a hearing is entitled to judicial review
37 as provided in article five, chapter twenty-nine-a of this code.

38 (g) Any party adversely affected by a final judgment of a
39 circuit court following judicial review may seek review by
40 appeal to the supreme court of appeals in the manner provided
41 in article six, chapter twenty-nine-a of this code.

§30-38-15. Penalties.

1 (a) Any person engaging in real estate appraisal activity in
2 this state who is not licensed under this article is guilty of a
3 misdemeanor and, upon conviction, shall be fined not less than
4 five hundred dollars nor more than one thousand dollars and
5 shall be ineligible to obtain a license for a period of one year
6 from the date of his or her conviction of such offense: *Provided,*
7 That the board, at its discretion, may grant a license within a
8 period of one year upon a finding of extenuating circumstances,
9 and after an administrative hearing.

10 (b) Any person acting or purporting to act as a certified real
11 estate appraiser who is not certified under this article is guilty
12 of a misdemeanor and, upon conviction, shall be fined not more
13 than two thousand five hundred dollars or imprisoned in the
14 county or regional jail for not more than one year, or both.

15 (c) If any person receives any money or the equivalent as a
16 fee, commission, compensation or profit by or in consequence
17 of a violation of any provision of this article, he or she shall, in
18 addition to the penalties prescribed above, be subject to a
19 penalty of not less than the sum of money so received nor more
20 than three times the sum as may be determined by the court,
21 which penalty may be recovered in a court of competent
22 jurisdiction by any person aggrieved as a result of any such
23 violation.

§30-38-16. Collection of appraisal fees.

1 No person engaged in the business of real estate appraising
2 in this state or acting in the capacity of a real estate appraiser in
3 this state may bring or maintain any action in any court of this
4 state to collect compensation for the performance of real estate
5 appraisal services for which a license is required by this article
6 without alleging and proving that he or she was the holder of a
7 valid real estate appraiser license in this state at all times during
8 the performance of such services.

§30-38-17. Standards of professional appraisal practice.

1 Each real estate appraiser licensed or certified under this act
2 shall comply with generally accepted standards of professional
3 appraisal practice and generally accepted ethical rules to be
4 observed by a real estate appraiser. Generally accepted stan-
5 dards of professional appraisal practice are currently evidenced
6 by the uniform standards of professional appraisal practice
7 promulgated by the appraisal foundation. The board may, after
8 a public hearing or public comment period held in accordance
9 with provisions of article three, chapter twenty-nine-a of this
10 code, adopt revised versions or make modifications of or
11 additions to the uniform standards of professional appraisal
12 practice.

§30-38-18. Attorney general opinions and duties.

1 At the request of the board, the state attorney general shall
2 render to the board an opinion with respect to all questions of
3 law arising in connection with the administration of this article
4 and shall act as attorney for the board in all actions and
5 proceedings brought by or against the board under, or pursuant
6 to, any of the provisions of this article. All fees and expenses of
7 the attorney general arising out of such duties shall be paid out
8 of the special fund created under this article to pay the expenses
9 of the administration of this article.

§30-38-19. Continuation of board.

1 The real estate appraiser licensing and certification board
2 shall continue to exist until the first day of July, two thousand
3 four, pursuant to the provisions of article ten, chapter four of
4 this code, unless sooner terminated, continued or reestablished
5 pursuant to the provision of that article.

CHAPTER 238

**(S. B. 226 — By Senators Minard, Anderson, Bowman,
Redd, Unger, Minear, Mitchell, Rowe, Caldwell,
Fanning, Snyder, Sharpe and Hunter)**

[Passed April 14, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirty-nine, relating to establishing the uniform athlete agents act; prohibited conduct; and penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 39. UNIFORM ATHLETE AGENTS ACT.

- §30-39-1. Short title.
- §30-39-2. Definitions.
- §30-39-3. Service of process; subpoenas.
- §30-39-4. Athlete agents: registration required; void contracts.
- §30-39-5. Registration as athlete agent; form; requirements.
- §30-39-6. Certificate of registration; issuance or denial; renewal.
- §30-39-7. Suspension, revocation, or refusal to renew registration.
- §30-39-8. Temporary registration.
- §30-39-9. Registration and renewal fees.
- §30-39-10. Required form of contract.
- §30-39-11. Notice to educational institution.
- §30-39-12. Student-athlete's right to cancel.
- §30-39-13. Required records.

§30-39-14. Prohibited conduct.

§30-39-15. Criminal penalties.

§30-39-16. Civil remedies.

§30-39-17. Administrative penalty.

§30-39-18. Uniformity of application and construction.

§30-39-19. Electronic signatures in global and national commerce act.

§30-39-20. Severability.

§30-39-21. Effective date.

§30-39-1. Short title.

1 This article may be cited as the Uniform Athlete Agents
2 Act.

§30-39-2. Definitions.

1 In this article:

2 (1) “Agency contract” means an agreement in which a
3 student-athlete authorizes a person to negotiate or solicit on
4 behalf of the student-athlete a professional-sports-services
5 contract or an endorsement contract.

6 (2) “Athlete agent” means an individual who enters into an
7 agency contract with a student-athlete or, directly or indirectly,
8 recruits or solicits a student-athlete to enter into an agency
9 contract. The term includes an individual who represents to the
10 public that the individual is an athlete agent. The term does not
11 include a spouse, parent, sibling, grandparent, or guardian of
12 the student-athlete or an individual acting solely on behalf of a
13 professional sports team or professional sports organization.

14 (3) “Athletic director” means an individual responsible for
15 administering the overall athletic program of an educational
16 institution or, if an educational institution has separately
17 administered athletic programs for male students and female
18 students, the athletic program for males or the athletic program
19 for females, as appropriate.

20 (4) “Contact” means a communication, direct or indirect,
21 between an athlete agent and a student-athlete, to recruit or
22 solicit the student-athlete to enter into an agency contract.

23 (5) “Endorsement contract” means an agreement under
24 which a student-athlete is employed or receives consideration
25 to use on behalf of the other party any value that the student-
26 athlete may have because of publicity, reputation, following, or
27 fame obtained because of athletic ability or performance.

28 (6) “Intercollegiate sport” means a sport played at the
29 collegiate level for which eligibility requirements for participa-
30 tion by a student-athlete are established by a national associa-
31 tion for the promotion or regulation of collegiate athletics.

32 (7) “Person” means an individual, corporation, business
33 trust, estate, trust, partnership, limited liability company,
34 association, joint venture, government; governmental subdivi-
35 sion, agency, or instrumentality; public corporation, or any
36 other legal or commercial entity.

37 (8) “Professional-sports-services contract” means an
38 agreement under which an individual is employed or agrees to
39 render services, as a player on a professional sports team, with
40 a professional sports organization, or as a professional athlete.

41 (9) “Record” means information that is inscribed on a
42 tangible medium or that is stored in an electronic or other
43 medium and is retrievable in perceivable form.

44 (10) “Registration” means registration as an athlete agent
45 pursuant to this article.

46 (11) “State” means a state of the United States, the District
47 of Columbia, Puerto Rico, the United States Virgin Islands or
48 any territory or insular possession subject to the jurisdiction of
49 the United States.

50 (12) "Student-athlete" means an individual who engages in,
51 is eligible to engage in, or may be eligible in the future to
52 engage in, any intercollegiate sport. If an individual is perma-
53 nently ineligible to participate in a particular intercollegiate
54 sport, the individual is not a student-athlete for purposes of that
55 sport.

§30-39-3. Service of process; subpoenas.

1 (a) By acting as an athlete agent in this state, a nonresident
2 individual appoints the secretary of state as the individual's
3 agent for service of process in any civil action in this state
4 related to the individual's acting as an athlete agent in this state.

5 (b) The secretary of state may issue subpoenas for any
6 material that is relevant to the administration of this article.

§30-39-4. Athlete agents: registration required; void contracts.

1 (a) Except as otherwise provided in subsection (b) of this
2 section, an individual may not act as an athlete agent in this
3 state without holding a certificate of registration under section
4 six or eight of this article.

5 (b) Before being issued a certificate of registration, an
6 individual may act as an athlete agent in this state for all
7 purposes except signing an agency contract, if:

8 (1) A student-athlete or another person acting on behalf of
9 the student-athlete initiates communication with the individual;
10 and

11 (2) Within seven days after an initial act as an athlete agent,
12 the individual submits an application for registration as an
13 athlete agent in this state.

14 (c) An agency contract resulting from conduct in violation
15 of this section is void and the athlete agent shall return any
16 consideration received under the contract.

§30-39-5. Registration as athlete agent; form; requirements.

1 (a) An applicant for registration shall submit an application
2 for registration to the secretary of state in a form prescribed by
3 the secretary of state. An application filed under this section is
4 a public record. The application must be in the name of an
5 individual and, except as otherwise provided in subsection (b)
6 of this section, signed or otherwise authenticated by the
7 applicant under penalty of perjury and state or contain:

8 (1) The name of the applicant and the address of the
9 applicant's principal place of business;

10 (2) The name of the applicant's business or employer, if
11 applicable;

12 (3) Any business or occupation engaged in by the applicant
13 for the five years next preceding the date of submission of the
14 application;

15 (4) A description of the applicant's:

16 (A) Formal training as an athlete agent;

17 (B) Practical experience as an athlete agent; and

18 (C) Educational background relating to the applicant's
19 activities as an athlete agent;

20 (5) The names and addresses of three individuals not related
21 to the applicant who are willing to serve as references;

22 (6) The name, sport and last known team for each individ-
23 ual for whom the applicant acted as an athlete agent during the

24 five years next preceding the date of submission of the applica-
25 tion;

26 (7) The names and addresses of all persons who are:

27 (A) With respect to the athlete agent's business if it is not
28 a corporation, the partners, members, officers, managers,
29 associates or profit-sharers of the business; and

30 (B) With respect to a corporation employing the athlete
31 agent, the officers, directors and any shareholder of the
32 corporation having an interest of five percent or greater;

33 (8) Whether the applicant or any person named pursuant to
34 subdivision (7) of this subsection has been convicted of a crime
35 that, if committed in this state, would be a crime involving
36 moral turpitude or a felony, and identify the crime;

37 (9) Whether there has been any administrative or judicial
38 determination that the applicant or any person named pursuant
39 to subdivision (7) of this subsection has made a false, mislead-
40 ing, deceptive, or fraudulent representation;

41 (10) Any instance in which the conduct of the applicant or
42 any person named pursuant to subdivision (7) of this subsection
43 resulted in the imposition of a sanction, suspension, or declara-
44 tion of ineligibility to participate in an interscholastic or
45 intercollegiate athletic event on a student-athlete or educational
46 institution;

47 (11) Any sanction, suspension, or disciplinary action taken
48 against the applicant or any person named pursuant to subdivi-
49 sion (7) of this subsection arising out of occupational or
50 professional conduct; and

51 (12) Whether there has been any denial of an application
52 for, suspension or revocation of, or refusal to renew, the
53 registration or licensure of the applicant or any person named

54 pursuant to subdivision (7) of this subsection as an athlete agent
55 in any state.

56 (b) An individual who has submitted an application for, and
57 holds a certificate of, registration or licensure as an athlete
58 agent in another state, may submit a copy of the application and
59 certificate in lieu of submitting an application in the form
60 prescribed pursuant to subsection (a) of this section. The
61 secretary of state shall accept the application and the certificate
62 from the other state as an application for registration in this
63 state if the application to the other state:

64 (1) Was submitted in the other state within six months next
65 preceding the submission of the application in this state and the
66 applicant certifies that the information contained in the
67 application is current;

68 (2) Contains information substantially similar to or more
69 comprehensive than that required in an application submitted in
70 this state; and

71 (3) Was signed by the applicant under penalty of perjury.

§30-39-6. Certificate of registration; issuance or denial; renewal.

1 (a) Except as otherwise provided in subsection (b) of this
2 section, the secretary of state shall issue a certificate of
3 registration to an individual who complies with subsection (a),
4 section five of this article or whose application has been
5 accepted under subsection (b), section five of this article.

6 (b) The secretary of state may refuse to issue a certificate
7 of registration if the secretary of state determines that the
8 applicant has engaged in conduct that has a significant adverse
9 effect on the applicant's fitness to act as an athlete agent. In
10 making the determination, the secretary of state may consider
11 whether the applicant has:

12 (1) Been convicted of a crime that, if committed in this
13 state, would be a crime involving moral turpitude or a felony;

14 (2) Made a materially false, misleading, deceptive, or
15 fraudulent representation in the application or as an athlete
16 agent;

17 (3) Engaged in conduct that would disqualify the applicant
18 from serving in a fiduciary capacity;

19 (4) Engaged in conduct prohibited by section fourteen of
20 this article;

21 (5) Had a registration or licensure as an athlete agent
22 suspended, revoked, or denied or been refused renewal of
23 registration or licensure as an athlete agent in any state;

24 (6) Engaged in conduct the consequence of which was that
25 a sanction, suspension, or declaration of ineligibility to partici-
26 pate in an interscholastic or intercollegiate athletic event was
27 imposed on a student-athlete or educational institution; or

28 (7) Engaged in conduct that significantly adversely reflects
29 on the applicant's credibility, honesty or integrity.

30 (c) In making a determination under subsection (b) of this
31 section, the secretary of state shall consider:

32 (1) How recently the conduct occurred;

33 (2) The nature of the conduct and the context in which it
34 occurred; and

35 (3) Any other relevant conduct of the applicant.

36 (d) An athlete agent may apply to renew a registration by
37 submitting an application for renewal in a form prescribed by
38 the secretary of state. An application filed under this section is

39 a public record. The application for renewal must be signed by
40 the applicant under penalty of perjury and must contain current
41 information on all matters required in an original registration.

42 (e) An individual who has submitted an application for
43 renewal of registration or licensure in another state, in lieu of
44 submitting an application for renewal in the form prescribed
45 pursuant to subsection (d) of this section, may file a copy of the
46 application for renewal and a valid certificate of registration or
47 licensure from the other state. The secretary of state shall accept
48 the application for renewal from the other state as an applica-
49 tion for renewal in this state if the application to the other state:

50 (1) Was submitted in the other state within six months next
51 preceding the filing in this state and the applicant certifies the
52 information contained in the application for renewal is current;

53 (2) Contains information substantially similar to or more
54 comprehensive than that required in an application for renewal
55 submitted in this state; and

56 (3) Was signed by the applicant under penalty of perjury.

57 (f) A certificate of registration or a renewal of a registration
58 is valid for two years.

§30-39-7. Suspension, revocation, or refusal to renew registration.

1 (a) The secretary of state may suspend, revoke or refuse to
2 renew a registration for conduct that would have justified denial
3 of registration under subsection (b), section six of this article.

4 (b) The secretary of state may deny, suspend, revoke or
5 refuse to renew a certificate of registration or licensure only
6 after proper notice and an opportunity for a hearing. The
7 provisions of article five, chapter twenty-nine-a of this code
8 apply to this article.

§30-39-8. Temporary registration.

1 The secretary of state may issue a temporary certificate of
2 registration while an application for registration or renewal of
3 registration is pending.

§30-39-9. Registration and renewal fees.

1 An application for registration or renewal of registration
2 must be accompanied by a fee in the following amount:

3 (1) Fifty dollars for an initial application for registration;

4 (2) Fifty dollars for an application for registration based
5 upon a certificate of registration or licensure issued by another
6 state;

7 (3) Ten dollars for an application for renewal of registra-
8 tion; or

9 (4) Ten dollars for an application for renewal of registration
10 based upon an application for renewal of registration or
11 licensure submitted in another state.

§30-39-10. Required form of contract.

1 (a) An agency contract must be in a record, signed or
2 otherwise authenticated by the parties.

3 (b) An agency contract must state or contain:

4 (1) The amount and method of calculating the consideration
5 to be paid by the student-athlete for services to be provided by
6 the athlete agent under the contract and any other consideration
7 the athlete agent has received or will receive from any other
8 source for entering into the contract or for providing the
9 services;

10 (2) The name of any person not listed in the application for
11 registration or renewal of registration who will be compensated
12 because the student-athlete signed the agency contract;

13 (3) A description of any expenses that the student-athlete
14 agrees to reimburse;

15 (4) A description of the services to be provided to the
16 student-athlete;

17 (5) The duration of the contract; and

18 (6) The date of execution.

19 (c) An agency contract must contain, in close proximity to
20 the signature of the student-athlete, a conspicuous notice in
21 boldface type in capital letters stating:

22 **WARNING TO STUDENT-ATHLETE**
23 **IF YOU SIGN THIS CONTRACT:**

24 **(1) YOU MAY LOSE YOUR ELIGIBILITY TO COM-**
25 **PETE AS A STUDENT-ATHLETE IN YOUR SPORT;**

26 **(2) IF YOU HAVE AN ATHLETIC DIRECTOR,**
27 **WITHIN 72 HOURS AFTER ENTERING INTO THIS**
28 **CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT**
29 **MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND**

30 **(3) YOU MAY CANCEL THIS CONTRACT WITHIN**
31 **14 DAYS AFTER SIGNING IT. CANCELLATION OF**
32 **THIS CONTRACT MAY NOT REINSTATE YOUR ELIGI-**
33 **BILITY.**

34 (d) An agency contract that does not conform to this section
35 is voidable by the student-athlete. If a student-athlete voids an
36 agency contract, the student-athlete is not required to pay any
37 consideration under the contract or to return any consideration

38 received from the athlete agent to induce the student-athlete to
39 enter into the contract.

40 (e) The athlete agent shall give a record of the signed or
41 otherwise authenticated agency contract to the student-athlete
42 at the time of execution.

§30-39-11. Notice to educational institution.

1 (a) Within seventy-two hours after entering into an agency
2 contract or before the next scheduled athletic event in which the
3 student-athlete may participate, whichever occurs first, the
4 athlete agent shall give notice in a record of the existence of the
5 contract to the athletic director of the educational institution at
6 which the student-athlete is enrolled or the athlete agent has
7 reasonable grounds to believe the student-athlete intends to
8 enroll.

9 (b) Within seventy-two hours after entering into an agency
10 contract or before the next athletic event in which the student-
11 athlete may participate, whichever occurs first, the student-
12 athlete shall inform the athletic director of the educational
13 institution at which the student-athlete is enrolled that he or she
14 has entered into an agency contract.

§30-39-12. Student-athlete's right to cancel.

1 (a) A student-athlete may cancel an agency contract by
2 giving notice of the cancellation to the athlete agent in a record
3 within fourteen days after the contract is signed.

4 (b) A student-athlete may not waive the right to cancel an
5 agency contract.

6 (c) If a student-athlete cancels an agency contract, the
7 student-athlete is not required to pay any consideration under
8 the contract or to return any consideration received from the

9 athlete agent to induce the student-athlete to enter into the
10 contract.

§30-39-13. Required records.

1 (a) An athlete agent shall retain the following records for a
2 period of five years:

3 (1) The name and address of each individual represented by
4 the athlete agent;

5 (2) Any agency contract entered into by the athlete agent;
6 and

7 (3) Any direct costs incurred by the athlete agent in the
8 recruitment or solicitation of a student-athlete to enter into an
9 agency contract.

10 (b) Records required by subsection (a) of this article to be
11 retained are open to inspection by the secretary of state during
12 normal business hours.

§30-39-14. Prohibited conduct.

1 (a) An athlete agent, with the intent to induce a student-
2 athlete to enter into an agency contract, may not:

3 (1) Give any materially false or misleading information or
4 make a materially false promise or representation;

5 (2) Furnish anything of value to a student-athlete before the
6 student-athlete enters into the agency contract; or

7 (3) Furnish anything of value to any individual other than
8 the student-athlete or another registered athlete agent.

9 (b) An athlete agent may not intentionally:

- 10 (1) Initiate contact with a student-athlete unless registered
11 under this article;
- 12 (2) Refuse or fail to retain or permit inspection of the
13 records required to be retained by section thirteen of this article;
- 14 (3) Fail to register when required by section four of this
15 article;
- 16 (4) Provide materially false or misleading information in an
17 application for registration or renewal of registration;
- 18 (5) Predate or postdate an agency contract; or
- 19 (6) Fail to notify a student-athlete before the student-athlete
20 signs or otherwise authenticates an agency contract for a
21 particular sport that the signing or authentication may make the
22 student-athlete ineligible to participate as a student-athlete in
23 that sport.

§30-39-15. Criminal penalties.

1 An athlete agent who violates subsection (a), section
2 fourteen of this article is guilty of a felony and, upon conviction
3 thereof, shall be fined not more than fifty thousand dollars or
4 confined in a state correctional facility for not less than one nor
5 more than three years, or both so fined and confined.

6 An athlete agent who violates subsection (b), section
7 fourteen of this article is guilty of a misdemeanor and, upon
8 conviction thereof, shall be fined not more than five hundred
9 dollars or confined in a county or regional jail for not more than
10 one year, or both so fined and confined.

§30-39-16. Civil remedies.

1 (a) An educational institution has a right of action against
2 an athlete agent or a former student-athlete for damages caused

3 by a violation of this article. In an action under this section, the
4 court may award to the prevailing party costs and reasonable
5 attorney's fees.

6 (b) Damages of an educational institution under subsection
7 (a) of this section include losses and expenses incurred because,
8 as a result of the conduct of an athlete agent or former student-
9 athlete, the educational institution was injured by a violation of
10 this article or was penalized, disqualified or suspended from
11 participation in athletics by a national association for the
12 promotion and regulation of athletics, by an athletic conference,
13 or by reasonable self-imposed disciplinary action taken to
14 mitigate sanctions likely to be imposed by such an organization.

15 (c) A right of action under this section does not accrue until
16 the educational institution discovers or by the exercise of
17 reasonable diligence would have discovered the violation by the
18 athlete agent or former student-athlete.

19 (d) Any liability of the athlete agent or the former student-
20 athlete under this section is several and not joint.

21 (e) This article does not restrict rights, remedies, or
22 defenses of any person under law or equity.

§30-39-17. Administrative penalty.

1 The secretary of state may assess a civil penalty against an
2 athlete agent not to exceed twenty-five thousand dollars for a
3 violation of this article.

§30-39-18. Uniformity of application and construction.

1 In applying and construing this uniform act, consideration
2 must be given to the need to promote uniformity of the law with
3 respect to its subject matter among states that enact it.

§30-39-19. Electronic signatures in global and national commerce act.

1 The provisions of this article governing the legal effect,
2 validity, or enforceability of electronic records or signatures,
3 and of contracts formed or performed with the use of such
4 records or signatures conform to the requirements of Section
5 102 of the Electronic Signatures in Global and National
6 Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000), and
7 supersede, modify, and limit the Electronic Signatures in Global
8 and National Commerce Act.

§30-39-20. Severability.

1 If any provision of this article or its application to any
2 person or circumstance is held invalid, the invalidity does not
3 affect other provisions or applications of this article which can
4 be given effect without the invalid provision or application, and
5 to this end the provisions of this article are severable.

§30-39-21. Effective date.

1 This article takes effect on the first day of July, two
2 thousand one.

CHAPTER 239

**(H. B. 2958 — By Delegates Amores, Staton,
Webster, R. Thompson, Wills and Faircloth)**

[Passed April 13, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article two, chapter six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section six, article four, chapter seven of said code; and to amend article seven of said chapter by adding thereto a new section, designated section four-a, all relating to prosecuting attorneys; providing for certain authorization and use of special prosecuting attorneys; and authorizing the option of full-time status for certain part-time prosecuting attorneys.

Be it enacted by the Legislature of West Virginia:

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

Chapter

6B. Public Officers and Employees; Ethics; Conflicts of Interest; Financial Disclosure.

7. County Commissions and Officers.

CHAPTER 6B. PUBLIC OFFICERS AND EMPLOYEES; ETHICS; CONFLICTS OF INTEREST; FINANCIAL DISCLOSURE.

ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES; DISCLOSURE OF FINANCIAL INTEREST BY PUBLIC OFFICIALS AND EMPLOYEES; APPEARANCES BEFORE PUBLIC AGENCIES.

§6B-2-9. Special prosecutor authorized.

- 1 (a) If the ethics commission finds as the result of an
- 2 investigation of a complaint that a pattern of ethics violations

3 or criminal violations under this chapter or under article five-a,
4 chapter sixty-one of this code, exists in a state, county or
5 covered municipal government, county school board or one of
6 their respective departments, agencies, boards or commissions,
7 and also finds that the prosecuting attorney of the county in
8 which the violation occurred is, for some reason, unable or
9 unwilling to take appropriate action, the chairman of the ethics
10 commission may, upon a two-thirds vote of the members of the
11 ethics commission, petition the appropriate circuit court for the
12 appointment of a special prosecutor for the purpose of conduct-
13 ing an investigation to determine whether a violation of the
14 criminal law of this state has occurred.

15 (b) A special prosecutor shall have the same authority as a
16 county prosecutor to investigate and prosecute persons subject
17 to this article for criminal violations committed in connection
18 with their public office or employment which constitute
19 felonies. No person who is serving as a prosecuting attorney or
20 assistant prosecuting attorney of any county is required to take
21 an additional oath when appointed to serve as a special prose-
22 cuting attorney.

23 (c) The ethics committee shall be authorized to employ and
24 assign the necessary professional and clerical staff to assist any
25 such special prosecutor in the performance of his or her duties
26 and to pay and to set the compensation to be paid to a special
27 prosecutor in an amount not to exceed seventy-five dollars per
28 hour up to a maximum of fifty thousand dollars per annum.

29 (d) The special prosecutor shall be empowered to make a
30 presentment to any regularly or specially impaneled grand jury
31 in the appointing circuit court. The special prosecutor shall be
32 empowered to prosecute any person indicted by such grand
33 jury.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

Article**4. Prosecuting Attorney, Rewards and Legal Advice.****7. Compensation of Elected County Officials.****ARTICLE 4. PROSECUTING ATTORNEY, REWARDS AND LEGAL
ADVICE.*****§7-4-6. West Virginia prosecuting attorneys institute.**

1 (a) There is hereby created the West Virginia prosecuting
2 attorneys institute, a public body whose membership shall
3 consist of the fifty-five elected county prosecuting attorneys in
4 the state. The institute shall meet at least once each calendar
5 year and the presence of twenty-eight of the fifty-five prosecu-
6 tors at any meeting constitutes a quorum for the conduct of the
7 institute's business.

8 (b) There is hereby created the executive council of the
9 West Virginia prosecuting attorneys institute which shall
10 consist of five prosecuting attorneys elected by the membership
11 of the West Virginia prosecuting attorneys institute at its annual
12 meeting and two persons appointed annually by the county
13 commissioner's association of West Virginia. The executive
14 council shall elect one member of the council to serve as
15 chairman of the institute for a term of one year without
16 compensation. The executive council shall serve as the regular
17 executive body of the institute.

18 (c) There is hereby created the position of executive
19 director of the West Virginia prosecuting attorneys institute to
20 be employed by the executive council of the institute. The
21 executive director of the West Virginia prosecuting attorneys
22 institute shall serve at the will and pleasure of the executive
23 council of the institute at an annual salary of fifty thousand
24 dollars per year: Beginning the first day of July, one thousand
25 nine hundred ninety-nine, the executive director shall receive an

***Clerk's Note:** This section was also amended by H. B. 2912 (Chapter 262), which passed subsequent to this act.

26 annual salary of fifty-five thousand dollars. The executive
27 director shall be licensed to practice law in the state of West
28 Virginia and shall devote full time to his or her official duties
29 and may not engage in the private practice of law.

30 (d) The duties and responsibilities of the institute, as
31 implemented by and through its executive council and its
32 executive director, shall include the following:

33 (1) To provide for special prosecuting attorneys to pursue
34 a criminal matter in any county upon the request of a circuit
35 court judge of that county and upon the approval of the
36 executive council;

37 (2) To establish and to implement general and specialized
38 training programs for prosecuting attorneys and their profes-
39 sional staffs;

40 (3) To provide materials for prosecuting attorneys and their
41 professional staffs, including legal research, technical assis-
42 tance and technical and professional publications;

43 (4) To compile and disseminate information on behalf of
44 prosecuting attorneys and their professional staffs on current
45 developments and changes in the law and the administration of
46 criminal justice;

47 (5) To establish and to implement uniform reporting
48 procedures for prosecuting attorneys and their professional
49 staffs in order to maintain and to provide accurate and timely
50 data and information relative to criminal prosecutorial matters;

51 (6) To accept and expend funds, grants and gifts and accept
52 services from any public or private source;

53 (7) To enter into agreements and contracts with public or
54 private agencies or educational institutions;

55 (8) To identify experts and other resources for use by
56 prosecutors in criminal matters;

57 (9) To make recommendations to the Legislature or the
58 supreme court of appeals of the state of West Virginia on
59 measures required, or procedural rules to be promulgated, to
60 make uniform the processing of juvenile cases in the fifty-five
61 counties of the state; and

62 (10) To develop a written handbook for prosecutors and
63 their assistants to use which delineates relevant information
64 concerning the elements of various crimes in West Virginia and
65 other information as the institute deems appropriate.

66 (e) Each prosecuting attorney is subject to appointment by
67 the institute to serve as a special prosecuting attorney in any
68 county where the prosecutor for that county or his or her office
69 has been disqualified from participating in a particular criminal
70 case. The circuit judge of any county of this state, who disquali-
71 fies the prosecutor or his or her office from participating in a
72 particular criminal case in that county, shall seek the appoint-
73 ment by the institute of a special prosecuting attorney to
74 substitute for the disqualified prosecutor. The executive director
75 of the institute shall, upon written request to the institute by any
76 circuit judge as a result of disqualification of the prosecutor or
77 for other good cause shown, and upon approval of the executive
78 council, appoint a prosecuting attorney to serve as a special
79 prosecuting attorney. The special prosecuting attorney ap-
80 pointed shall serve without any further compensation other than
81 that paid to him or her by his or her county, except that he or
82 she is entitled to be reimbursed for his or her legitimate
83 expenses associated with travel, mileage and room and board
84 from the county to which he or she is appointed as a prosecutor.
85 The county commission in which county he or she is special
86 prosecutor is responsible for all expenses associated with the
87 prosecution of the criminal action. No person who is serving as

88 a prosecuting attorney or assistant prosecuting attorney of any
 89 county is required to take an additional oath when appointed to
 90 serve as a special prosecuting attorney.

91 (f) The executive director of the institute shall maintain an
 92 appointment list that shall include the names of all fifty-five
 93 prosecuting attorneys and that shall also include the names of
 94 any assistant prosecuting attorney who wishes to serve as a
 95 special prosecuting attorney upon the same terms and condi-
 96 tions as set forth in this section. The executive director of the
 97 institute, with the approval of the executive council, shall
 98 appoint special prosecuting attorneys from the appointment list
 99 for any particular matter giving due consideration to the
 100 proximity of the proposed special prosecuting attorney's home
 101 county to the county requesting a special prosecutor and giving
 102 due consideration to the expertise of the special prosecuting
 103 attorney.

104 (g) Commencing on the first day of July, one thousand nine
 105 hundred ninety-six, each county commission shall pay, on a
 106 monthly basis, a special prosecution premium to the treasurer
 107 of the state for the funding of the West Virginia prosecuting
 108 attorneys institute. The monthly premiums shall be paid
 109 according to the following schedule:

MONTHLY PREMIUMS				
Assessed Valuation of Property of All Classes in the County				
113	Category	Minimum	Maximum	Premium
114	A	\$1,500,000,000	Unlimited	\$400
115	B	\$1,000,000,000	\$1,499,999,000	\$375
116	C	\$ 800,000,000	\$ 999,999,000	\$350
117	D	\$ 700,000,000	\$ 799,999,000	\$325
118	E	\$ 600,000,000	\$ 699,999,000	\$300
119	F	\$ 500,000,000	\$ 599,999,000	\$250

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120	G	\$ 400,000,000	\$ 499,999,000	\$200
121	H	\$ 300,000,000	\$ 399,999,000	\$150
122	I	\$ 200,000,000	\$ 299,999,000	\$100
123	J	-0-	\$ 199,999,000	\$ 50

124 Upon receipt of a premium, grant, reimbursement or other
125 funding source, excluding federal funds as provided in article
126 two, chapter four of this code, the treasurer shall deposit the
127 funds into a special revenue fund to be known as the “West
128 Virginia prosecuting attorneys institute fund”. All costs of
129 operating the West Virginia prosecuting attorneys institute shall
130 be paid from the West Virginia prosecuting attorneys institute
131 fund upon proper authorization by the executive council or by
132 the executive director of the institute and subject to annual
133 appropriation by the Legislature of the amounts contained
134 within the fund.

135 (h) The West Virginia prosecuting attorneys institute shall
136 continue to exist until the first day of July, two thousand five,
137 unless continued by an act of the Legislature. The institute shall
138 annually by the first day of the regular legislative session
139 provide the joint committee on government and finance with a
140 report setting forth the activities of the institute and suggestions
141 for legislative action.

142 (i) Neither the institute nor its employees acting in their
143 employment capacity shall engage in activities before govern-
144 mental bodies which advocate positions on issues other than
145 those issues consistent with the duties of the institute set forth
146 in subsection (d) of this section.

ARTICLE 7. COMPENSATION OF ELECTED COUNTY OFFICIALS.

§7-7-4a. Authorizing the option of full-time status for part-time prosecuting attorneys.

1 Notwithstanding any provision of this code to the contrary,
2 in any county which has a part-time prosecuting attorney the
3 county commission may, on the request of the prosecuting
4 attorney, find that such facts and circumstances exist that
5 require the prosecuting attorney to devote full time to his or her
6 public duties. If the county commission makes such a finding,
7 by proper order adopted and entered, it shall require the
8 prosecuting attorney to devote full time to his or her public
9 duties and the county commission shall then compensate the
10 prosecuting attorney at the same rate of compensation estab-
11 lished for a prosecuting attorney in a Class V county: *Provided,*
12 That nothing contained herein may be interpreted to affect the
13 status of a prosecuting attorney who has heretofore, by proper
14 order so entered, become full time.

CHAPTER 240

(H. B. 2525 — By Delegates Douglas, Kuhn, Butcher,
Hatfield, Manchin, Prunty and Leggett)

[Passed March 28, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section three, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the public employees insurance agency.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.***§5-16-3. Public employees insurance agency continued; appointment, qualification, compensation and duties of director of agency; employees; civil service coverage; director vested after specified date with powers of public employees insurance board; expiration of agency.**

1 (a) The public employees insurance agency is continued,
2 and consists of the director, the finance board, the advisory
3 board and any employees who may be authorized by law. The
4 director shall be appointed by the governor, with the advice and
5 consent of the Senate. He or she shall serve at the will and
6 pleasure of the governor, unless earlier removed from office for
7 cause as provided by law. The director shall have at least three
8 years' experience in health insurance administration prior to
9 appointment as director. The director shall receive an annual
10 salary established by the governor not to exceed sixty-five
11 thousand dollars and actual expenses incurred in the perfor-
12 mance of official business. The director shall employ such
13 administrative, technical and clerical employees as are required
14 for the proper administration of the insurance programs
15 provided for in this article. The director shall perform such
16 duties as are required of him or her under the provisions of this
17 article and is the chief administrative officer of the public
18 employees insurance agency. The director may employ a deputy
19 director: *Provided*, That the director shall report each year to
20 the joint committee on government and finance on the agency's
21 total contract costs for consultant contracts and the costs of the
22 deputy director's position for the fiscal years one thousand nine
23 hundred ninety-eight through two thousand.

24 (b) All positions in the agency, except for the director, his
25 or her personal secretary, the deputy director and the chief
26 financial officer shall be included in the classified service of

***Clerk's Note:** This section was also amended by H. B. 2912 (Chapter 262), which passed subsequent to this act.

27 the civil service system pursuant to article six, chapter
28 twenty-nine of this code. Any person required to be included in
29 the classified service by the provisions of this subsection who
30 was employed in any of the positions included in this subsec-
31 tion on or after the effective date of this article shall not be
32 required to take and pass qualifying or competitive examina-
33 tions upon or as a condition to being added to the classified
34 service: *Provided*, That no person required to be included in the
35 classified service by the provisions of this subsection who was
36 employed in any of the positions included in this subsection as
37 of the effective date of this section shall be thereafter severed,
38 removed or terminated in his or her employment prior to his or
39 her entry into the classified service except for cause as if the
40 person had been in the classified service when severed,
41 removed or terminated.

42 (c) The director is responsible for the administration and
43 management of the public employees insurance agency as
44 provided for in this article and in connection with his or her
45 responsibility shall have the power and authority to make all
46 rules necessary to effectuate the provisions of this article.
47 Nothing in section four or five of this article shall limit the
48 director's ability to manage on a day-to-day basis the group
49 insurance plans required or authorized by this article, including,
50 but not limited to, administrative contracting, studies, analyses
51 and audits, eligibility determinations, utilization management
52 provisions and incentives, provider negotiations, provider
53 contracting and payment, designation of covered and
54 noncovered services, offering of additional coverage options or
55 cost containment incentives, pursuit of coordination of benefits
56 and subrogation, or any other actions which would serve to
57 implement the plan or plans designed by the finance board.

58 (d) The public employees insurance agency shall terminate
59 in the manner provided in article ten, chapter four of this code,
60 on the first day of July, two thousand two, unless extended by
61 legislation enacted before the termination date.

CHAPTER 241

(H. B. 2526 — By Delegates Douglas, Kuhn, Butcher,
Hatfield, Manchin, Prunty and Leggett)

[Passed March 28, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section four, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the public employees insurance agency finance board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-4. Public employees insurance agency finance board continued; qualifications, terms and removal of members; quorum; compensation and expenses; termination date.

- 1 (a) There is hereby continued the public employees
- 2 insurance agency finance board, which consists of the director
- 3 and six members appointed by the governor with the advice and
- 4 consent of the Senate for terms of four years and until the
- 5 appointment of their successors: *Provided*, That of the two
- 6 members added to the board by the amendment of this section,
- 7 enacted during the regular legislative session, one thousand

8 nine hundred ninety-nine, the at-large member shall be ap-
9 pointed for an initial term of two years and the member
10 representing organized labor shall be appointed for a term of
11 four years. Members may be reappointed for successive terms.
12 No more than four members (including the director) may be of
13 the same political party.

14 (b) Of the six members appointed by the governor, one
15 member shall represent the interests of education employees,
16 one shall represent the interests of public employees, one shall
17 represent the interests of organized labor and three shall be
18 selected from the public at large. The governor shall appoint the
19 member representing the interests of education employees from
20 a list of three names submitted by the largest organization of
21 education employees in this state. The governor shall appoint
22 the member representing the interests of organized labor from
23 a list of three names submitted by the state's largest organiza-
24 tion representing labor affiliates. The three members appointed
25 from the public shall each have experience in the financing,
26 development or management of employee benefit programs. All
27 new appointments made after the first day of July, one thousand
28 nine hundred ninety-four, shall be selected to represent the
29 different geographical areas within the state and all members
30 shall be residents of West Virginia. No member may be
31 removed from office by the governor except for official
32 misconduct, incompetence, neglect of duty, neglect of fiduciary
33 duty or other specific responsibility imposed by this article, or
34 gross immorality.

35 (c) The director shall serve as chairperson of the finance
36 board, which shall meet at times and places specified by the call
37 of the director or upon the written request to the director of at
38 least two members. Notice of each meeting shall be given in
39 writing to each member by the director at least three days in
40 advance of the meeting. Four members constitutes a quorum.
41 The board shall pay each member the same compensation and

42 expense reimbursement as is paid to members of the Legislature
43 for their interim duties, as recommended by the citizens
44 legislative compensation commission and authorized by law for
45 each day or portion of a day engaged in the discharge of official
46 duties.

47 (d) Pursuant to the provisions of article ten, chapter four of
48 this code, the finance board shall terminate on the first day of
49 July, two thousand three, unless extended by legislation enacted
50 before the termination date.

51 (e) Upon termination of the board and notwithstanding any
52 provisions in this article to the contrary, the director is autho-
53 rized to assess monthly employee premium contributions and
54 to change the types and levels of costs to employees only in
55 accordance with this subsection. Any assessments or changes
56 in costs imposed pursuant to this subsection shall be imple-
57 mented by legislative rule proposed by the director for promul-
58 gation pursuant to the provisions of article three, chapter
59 twenty-nine-a of this code; any employee assessments or costs
60 previously authorized by the finance board shall then remain in
61 effect until amended by rule of the director promulgated
62 pursuant to this subsection.

CHAPTER 242

**(S. B. 717 — By Senators Craigo, Unger, Oliverio, Anderson,
Deem, Kessler, McCabe, Redd, Ross and Sharpe)**

[Passed April 13, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact article one-a, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section nine, all relating to the West Virginia small business linked deposit program.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1A. WEST VIRGINIA SMALL BUSINESS LINKED DEPOSIT PROGRAM.

§12-1A-1. Definitions.

§12-1A-2. Legislative findings.

§12-1A-3. Limitations on investment in linked deposits.

§12-1A-4. Applications for loan priority; loan package; counseling.

§12-1A-5. Acceptance or rejection of loan package; deposit agreement.

§12-1A-6. Rate of loan; certification and monitoring of compliance; accountability and reporting.

§12-1A-7. Liability of state.

§12-1A-8. Penalties for violation of article.

§12-1A-9. Effective dates.

§12-1A-1. Definitions.

1 (a) "Treasurer" means the West Virginia treasurer's office.

2 (b) "Eligible small business" means any business that: (1)
3 Employs fifty or fewer employees and has gross annual receipts
4 of five million dollars or less; (2) is headquartered in this state;
5 and (3) is organized for profit.

6 (c) "Eligible lending institution" means a financial institu-
7 tion that is eligible to make commercial loans, is a public

8 depository of state funds and agrees to participate in the linked
9 deposit program.

10 (d) "Linked deposit" means a certificate of deposit placed
11 by the treasurer with an eligible lending institution at three
12 percent below current market rates, as determined and calcu-
13 lated by the treasurer, provided the institution agrees to lend the
14 value of the deposit, according to the deposit agreement
15 provided for by this article, to eligible small businesses at three
16 percent below the present borrowing rate applicable to each
17 specific business at the time of the deposit of state funds in the
18 institution.

§12-1A-2. Legislative findings.

1 The Legislature finds that many small businesses through-
2 out the state are experiencing economic stagnation or decline,
3 that high interest rates have caused small businesses in this state
4 to suffer disproportionately in profitability and competition and
5 that the high interest rates have fostered a serious increase in
6 unemployment. The linked deposit program provided for by
7 this article is intended to provide a statewide availability of
8 lower cost funds for lending purposes that will materially
9 contribute to the economic revitalization of this state. Accord-
10 ingly, it is declared to be the public policy of the state through
11 the small business linked deposit program to create an availabil-
12 ity of lower-cost funds to inject needed capital into the small
13 business community, sustain or improve business profitability,
14 and protect the jobs of citizens of this state. The Legislature
15 further finds that the involvement of both the treasurer in
16 facilitating the deposit of funds for the program and the small
17 business development center in determining which businesses
18 will receive the benefits of the linked deposit program is
19 necessary in order for state funds to be used in the most
20 effective manner possible in assisting small businesses through-
21 out the state and thereby maximizing the impact of the program.

§12-1A-3. Limitations on investment in linked deposits.

1 (a) The treasurer shall invest in linked deposits. The total
2 amount so deposited at any one time shall not exceed, in the
3 aggregate, twenty million dollars.

4 (b) Small business linked deposit funds shall be used to
5 provide each applicant with no more than one hundred fifty
6 thousand dollars for each reduced rate loan.

7 (c) When deciding how much to invest in linked deposits,
8 the treasurer shall give priority to the investment, liquidity and
9 cash flow needs of the state.

§12-1A-4. Applications for loan priority; loan package; counseling.

1 (a) An eligible lending institution that desires to receive a
2 linked deposit shall accept and review applications for loans
3 from eligible small businesses. The lending institution shall
4 apply all usual lending standards to determine the credit
5 worthiness of each eligible small business and whether the loan
6 application meets the criteria established in this article.

7 (b) An eligible small business shall certify on its loan
8 application that the reduced rate loan will be used exclusively
9 to create new jobs or preserve existing jobs and employment
10 opportunities. A reduced rate loan shall not be used to refinance
11 an existing debt. Whoever knowingly makes a false statement
12 concerning an application shall be prohibited from entering into
13 the linked deposit loan program and shall be subject to the
14 criminal penalties of section eight of this article.

15 (c) In considering which eligible small businesses should
16 receive reduced rate loans, the eligible lending institution shall
17 give priority to the economic needs of the area in which the
18 business is located, the number of jobs to be created and

19 preserved by the receipt of the loan, the reasonable ability of the
20 small business to repay the loan and other factors considered
21 appropriate by the eligible financial institution.

22 (d) A small business receiving a linked deposit loan shall
23 receive supervision and counseling provided by the small
24 business development center as a condition of remaining in
25 good standing with the lending institution and the state and as
26 a condition of having the loan renewed for up to four years. The
27 services available from the small business development center
28 include eligibility certification, business planning, quarterly
29 financial statement review and loan proposal assistance.
30 Eligible small businesses shall also grant the lending institution
31 the right to provide information on the status of the loan to the
32 small business development center so as to assist the small
33 business.

34 (e) The eligible financial institution shall forward to the
35 treasurer a linked deposit loan package, in the form and manner
36 as prescribed by the small business development center and the
37 treasurer. The package shall include the amount of the loan
38 requested and the number of jobs to be created or sustained by
39 each eligible small business. The institution shall certify that
40 each applicant is an eligible small business, and may, for each
41 business, certify the present borrowing rate applicable to each
42 specific eligible business.

43 (f) The rate charged to the eligible small business shall not
44 exceed the prime interest rate as published by the wall street
45 journal on the date that the eligible financial institution certifies
46 the applicant is eligible.

§12-1A-5. Acceptance or rejection of loan package; deposit agreement.

1 (a) The small business development center in cooperation
2 with the treasurer may accept or reject a linked deposit loan

3 package or any portion thereof based on the criteria prescribed
4 by this article.

5 (b) The treasurer shall reject any linked deposit loan
6 package if the small business requesting the loan is not in good
7 standing with the state tax department and the bureau of
8 employment programs and these agencies shall provide the
9 treasurer with such information as to the standing of each small
10 business loan applicant, notwithstanding any provision of this
11 code to the contrary.

12 (c) Upon acceptance of the linked deposit loan package or
13 any portion thereof by the small business development center
14 in cooperation with the treasurer, the treasurer may place
15 certificates of deposit with the eligible lending institution at
16 three percent below current market rates, as determined and
17 calculated by the treasurer. When necessary, the treasurer may
18 place certificates of deposit prior to acceptance of a linked
19 deposit loan package.

20 (d) The eligible lending institution shall enter into a deposit
21 agreement with the treasurer in a form in compliance with the
22 requirements of this article. The deposit agreement shall reflect
23 the market conditions prevailing in the lending area and the
24 period of time in which the lending institution is to lend funds
25 upon the placement of a linked deposit. The deposit agreement
26 shall include provisions for the certificates of deposit to be
27 placed for a maximum of four years with annual renewals.
28 Interest shall be paid at the times determined by the treasurer.

**§12-1A-6. Rate of loan; certification and monitoring of compli-
ance; accountability and reporting.**

1 (a) Upon the placement of a linked deposit with an eligible
2 lending institution, the institution is required to lend the funds
3 to each approved eligible small business listed in the linked
4 deposit loan package required in subsection (d), section four of

5 this article and in accordance with the deposit agreement
6 required by subsection (c), section five of this article. The loan
7 shall be at three percent below the present borrowing rate
8 applicable to each business. A certification of compliance with
9 this section in the form and manner as prescribed by the small
10 business development center and the treasurer shall be required
11 of the eligible lending institution.

12 (b) The small business development center and the treasurer
13 shall take any and all steps necessary to implement the linked
14 deposit program and monitor compliance of eligible lending
15 institutions. The small business development center shall
16 monitor the compliance of eligible small businesses.

17 (c) By the first day of January of each year, the small
18 business development center shall report on the linked deposit
19 program for the preceding calendar year to the West Virginia
20 development office, which shall then report to the joint
21 committee on government and finance. The reports shall set
22 forth the name of the small business, terms, delinquency and
23 default rates, job growth, gross income evaluation and amounts
24 of the loans upon which the linked deposits were based.

§12-1A-7. Liability of state.

1 The state, the treasurer and the small business development
2 center are not liable to any eligible lending institution in any
3 manner for payment of the principal or interest on the loan to an
4 eligible small business. Any delay in payment or default on the
5 part of an eligible small business does not in any manner affect
6 the deposit agreement between the eligible lending institution
7 and the board.

§12-1A-8. Penalties for violation of article.

1 Any person who violates this article is guilty of a misde-
2 meanor and, upon conviction thereof, shall be fined not less

3 than one hundred nor more than five hundred dollars or
4 imprisoned in the county jail not less than one month nor more
5 than one year.

§12-1A-9. Effective dates.

1 This article shall be effective from the first day of July, two
2 thousand one, through the first day of July, two thousand six.

CHAPTER 243

**(H. B. 3237 — By Delegates Michael, Cann, Boggs,
Compton, Kominar, Ashley and Stalnaker)**

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article two, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to receipt of funds by officials, employees and spending units of the state; requiring a spending unit to obtain authorization to deposit funds in an account outside the treasury; and requiring return of funds upon revocation of authorization.

Be it enacted by the Legislature of West Virginia:

That section three, article two, 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 2. PAYMENT AND DEPOSIT OF TAXES AND OTHER AMOUNTS DUE THE STATE OR ANY POLITICAL SUBDIVISION.

§12-2-3. Deposit of moneys not due the state.

1 All officials and employees of the state authorized to accept
2 moneys that the state treasurer determines or that this code
3 specifies are not funds due the state pursuant to the provisions
4 of section two of this article shall deposit the moneys, as soon
5 as practicable, in the manner and in the depository specified by
6 the treasurer. The treasurer shall prescribe the forms and
7 procedures for depositing the moneys. A spending unit shall
8 obtain written authorization from the state treasurer before
9 depositing the funds in an account outside the treasury. Upon
10 the treasurer's written revocation of the authorization, the
11 spending unit shall deposit funds deposited in an account
12 outside the treasury in the treasury in the manner and in the
13 depository specified by the treasurer. The treasurer is the final
14 determining authority as to whether these funds are funds due
15 or not due the state pursuant to section two of this article. The
16 treasurer shall on a quarterly basis provide the legislative
17 auditor with a report of all accounts approved by him or her.

CHAPTER 244

(S. B. 565 — By Senator Chafin)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and eight, article nine, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article

by adding thereto a new section, designated section twelve, all relating to the supervision of local government offices; ensuring that chief inspector issues all reports and audits timely and requirements are abided by; providing cost of services provided by the chief inspector to be charged if a municipality undergoes a single audit related to a federal grant; allowing raising the cap on the cost of services provided to certain utility or park systems; interest earned on costs collected for services of the chief inspector to go into the revolving fund; and providing for the development of an intern program for students pursuing a graduate degree in business.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. SUPERVISION OF LOCAL GOVERNMENT OFFICES.

§6-9-2. Uniform system of accounting and reporting for local governmental offices and agencies; form and uniform system for receipts; additional power and authority.

§6-9-8. Payment of cost of services of chief inspector; revolving fund.

§6-9-12. Business intern program.

§6-9-2. Uniform system of accounting and reporting for local governmental offices and agencies; form and uniform system for receipts; additional power and authority.

1 The chief inspector shall formulate, prescribe and install a
2 system of accounting and reporting in conformity with the
3 provisions of this article, which shall be uniform for all local
4 governmental offices and agencies and for all public accounts
5 of the same class and which shall exhibit true accounts and
6 detailed statements for all public funds collected, received and

7 expended for any purpose by all local governmental officers,
8 employees or other persons. The accounts shall show the
9 receipt, use and disposition of all public property under the
10 control of local governmental officers, employees or other
11 persons and any income derived therefrom and of all sources of
12 public income, the amounts due and received from each source,
13 all receipts, vouchers and other documents kept or required to
14 be kept and necessary to identify and prove the validity of every
15 transaction, all statements and reports made or required to be
16 made for the internal administration of the office to which they
17 pertain and all reports published or required to be published for
18 the information of the people regarding any and all details of
19 the financial administration of public affairs. The chief inspec-
20 tor shall prescribe receipt forms for all local governmental
21 offices and agencies and shall formulate, prescribe and install
22 a uniform system with respect to the utilization, processing and
23 disposition of receipts given as evidence of moneys or property
24 collected or received by local governmental offices and
25 agencies. The chief inspector shall also formulate, prescribe and
26 install a system of accounting for the civil accounts of the
27 offices of the magistrates, which shall exhibit true accounts and
28 detailed statements of the services rendered, the name and
29 address of the persons for whom rendered, the charges made
30 and collected therefor and other information as may be neces-
31 sary to identify the transaction.

32 The chief inspector is vested and charged with the duties of
33 administering and enforcing the provisions of this article and is
34 authorized to promulgate and to enforce such rules as may be
35 necessary to implement the administration and enforcement.
36 The chief inspector shall use due diligence to ensure that all
37 reports and audits are issued in a timely manner and to comply
38 with all federal audit and bonded indebtedness requirements so
39 as not to jeopardize the entity's funding. The power and
40 authority herein granted shall be in addition to all other power

41 and authority vested by law in the state tax commissioner as
42 chief inspector or otherwise.

§6-9-8. Payment of cost of services of chief inspector; revolving fund.

1 The cost of any service or act performed by the chief
2 inspector under the provisions of this article as to any county or
3 district office, officer or institution shall be paid by the county
4 commission of the county; the cost thereof as to any board of
5 education shall be paid by the board; the cost thereof as to any
6 municipal corporation shall be paid by the authorities thereof:
7 *Provided*, That in municipalities in which the total revenue
8 from all taxes does not exceed the sum of two thousand dollars
9 annually, the cost including the per diem and all actual costs
10 and expenses of the services shall not exceed the sum of sixty
11 dollars. The cost of this service shall be the actual cost and
12 expense of the service performed, including transportation,
13 hotel, meals, materials, per diem compensation of deputies,
14 assistants, clerical help and the other costs as may be necessary
15 to enable them to perform the services required, but the costs
16 shall not exceed the sum of two thousand dollars for services
17 rendered to a Class III or a Class IV municipality: *Provided*,
18 *however*, That the chief inspector may charge up to an addi-
19 tional two thousand dollars for costs incurred for each service
20 or act performed for a utility or park system owned by a Class
21 III or Class IV municipality: *Provided further*, That if a
22 municipality is required to undergo a single audit by the federal
23 agency or agencies making a grant, the foregoing cost limita-
24 tions do not apply: *And provided further*, That the chief
25 inspector shall provide a written quote for all costs in advance
26 for all services required by this article. The chief inspector shall
27 render to the agency liable for the cost a statement thereof as
28 soon after the same was incurred as practicable and it shall be
29 the duty of the agency to allow the same and cause it to be paid
30 promptly in the manner that other claims and accounts are

31 allowed and paid and the total amount shall constitute a debt
32 against the local agency due the state. Whenever there is in the
33 state treasury a sum of money due any county commission,
34 board of education or municipality from any source, upon the
35 application of the chief inspector, the same shall be at once
36 applied on the debt aforesaid against the county commission,
37 board of education or municipality and the fact of the applica-
38 tion of the fund shall be reported by the auditor to the county
39 commission, board of education or municipality, which report
40 shall be a receipt for the amount therein named. All money
41 received by the chief inspector from this source shall be paid
42 into the state treasury, shall be deposited to the credit of an
43 account to be known as chief inspector's fund and shall be
44 expended only for the purpose of covering the cost of the
45 services, unless otherwise directed by the Legislature. The cost
46 of any examination, service or act by the chief inspector made
47 necessary, or the part thereof as was made necessary, by the
48 willful fault of any officer or employee, may be recovered by
49 the chief inspector from that person, on motion, on ten days'
50 notice in any court having jurisdiction.

51 For the purpose of permitting payments to be made at
52 definite periods to deputy inspectors and assistants for per diem
53 compensation and expenses, there is hereby created a revolving
54 fund for the chief inspector's office. The fund shall be accumu-
55 lated and administered as follows:

56 (1) There shall be appropriated from the state fund general
57 revenue the sum of twenty-five thousand dollars to be trans-
58 ferred to this fund to create a revolving fund which, together
59 with other payments into this fund as provided in this article,
60 shall constitute a fund to defray the cost of this service.

61 (2) Payments received for the cost of services of the chief
62 inspector's office and interest earned on the invested balance of
63 the chief inspector's revolving fund shall be deposited into this

64 revolving fund, which shall be known as the chief inspector's
65 fund.

66 (3) Any appropriations made to this fund may not be
67 considered to have expired at the end of any fiscal period.

§6-9-12. Business intern program.

1 Beginning the first day of July, two thousand two, the chief
2 inspector shall develop in conjunction with the graduate
3 business programs at West Virginia university and Marshall
4 university an intern program which utilizes students pursuing
5 a graduate degree in business, economics or accounting to assist
6 in the auditing function of the office of the chief inspector. This
7 program shall provide that those students who satisfactorily
8 complete the program shall receive up to two hours credit
9 toward their degree.

CHAPTER 245

(Com. Sub. for H. B. 2225 — By Delegates Ennis,
Stemple, Williams, Fletcher and Armstead)

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article nine, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section thirteen, article nine-b, chapter eighteen, all relating to examinations into affairs of local public offices; audit and review procedures of county boards of education; eliminating requirement of audit by office of chief inspector every three years; and requiring chief

inspector furnish list of local government offices or political subdivisions to Legislature.

Be it enacted by the Legislature of West Virginia:

That section seven, article nine, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section thirteen, article nine-b, chapter eighteen of said code be amended and reenacted, all to read as follows:

Chapter

6. Miscellaneous Provisions.

18. Education.

CHAPTER 6. MISCELLANEOUS PROVISIONS.

ARTICLE 9. SUPERVISION OF LOCAL GOVERNMENT OFFICES.

§6-9-7. Examinations into affairs of local public offices; penalties.

1 (a) The chief inspector has the power by himself or herself,
2 or by any person appointed, designated or approved by the chief
3 inspector to perform the service, to examine into all financial
4 affairs of every local governmental office or political subdivi-
5 sion and all boards, commissions, authorities, agencies or other
6 offices created under authority thereof. An examination shall be
7 made annually, if required, to comply with the Single Audit Act
8 and when otherwise required by law or contract. When that act
9 does not apply, unless otherwise required by law or by contract
10 the examination shall be made at least once a year, if practica-
11 ble. Furthermore, the chief inspector shall furnish annually to
12 the Legislature a list of each local government office or
13 political subdivision and all boards, commissions, authorities,
14 agencies or other offices created under authority thereof and the
15 year of its most recent completed audit.

16 (b) When required for compliance with regulations for
17 federal funds received or expended by county boards of
18 education the chief inspector or his or her designee, including
19 any certified public accountant approved by the chief inspector
20 shall conduct and issue an audit report within the time specified
21 in controlling federal regulations. Examinations of other local
22 governments shall be conducted and audit or review reports
23 issued in accordance with uniform procedures of the chief
24 inspector.

25 (c) A county board of education may elect, by the first day
26 of May of the fiscal year to be audited, to have its annual
27 examination performed by a certified public accountant
28 approved by the chief inspector to perform the examinations.
29 When this election is made, a copy of the order of the county
30 board making the election shall be filed with the chief inspector
31 and the state board of school finance. The county board of
32 education is allowed to contract with any certified public
33 accountant on the chief inspector's then current list of approved
34 certified public accountants, unless the state board of school
35 finance or the prosecuting attorney of the county in which the
36 board is located timely submits to the chief inspector a written
37 request for the examination to be performed by the chief
38 inspector or a person appointed by the chief inspector, or the
39 chief inspector determines that a special or unusual situation
40 exists. The county board shall follow the audit bid procurement
41 procedures established by the chief inspector in obtaining the
42 audit.

43 (d) The chief inspector shall, at least annually, prepare a list
44 of certified public accountants approved by the chief inspector
45 to perform examinations of local governments. Names shall be
46 added to or deleted from that list in accordance with uniform
47 procedures of the chief inspector. When each list or updated list
48 is issued, the chief inspector shall promptly file a copy of the
49 list in the state register and send a copy to the state board of

50 education, the state board of school finance and to local
51 governments who request a copy.

52 (e) A county board of education, when procuring the
53 services of a certified public accountant on the chief inspector's
54 list, shall follow the procurement standards prescribed by the
55 grants management common rule, OMB Circular A-102
56 "Grants and Cooperative Agreements with State and Local
57 Governments" in effect for the fiscal year being examined, or
58 in any replacement circular or regulation of the office of
59 management and budget and in addition shall follow those
60 standards as determined by the office of chief inspector.

61 (f) The approved independent certified public accountant
62 making examinations under this section shall comply with
63 requirements of this section applicable to examinations
64 performed by the chief inspector, including applicable require-
65 ments of the federal government and uniform procedures of the
66 chief inspector applicable to examinations of county boards of
67 education.

68 (1) Upon completion of the certified public accountant's
69 examination and audit or review report, the certified public
70 accountant shall promptly send two copies of the certified
71 report to the county board of education who shall file one copy
72 with the federal audit clearing house. The certified public
73 accountant shall send one copy of the certified report to the
74 state board of school finance, and one copy to the chief
75 inspector.

76 (2) If any examination discloses misfeasance, malfeasance
77 or nonfeasance in office on the part of any public officer or
78 employee, the certified public accountant shall submit his or her
79 recommendation to the chief inspector regarding the legal
80 action the approved certified public accountant considers
81 appropriate, including, but not limited to, whether criminal

82 prosecution or civil action to effect restitution is appropriate,
83 and three additional copies of the certified audit report. After
84 review of the recommendations and the audit report, the chief
85 inspector shall proceed as provided in subsection (n) of this
86 section. For purposes of this section and section thirteen, article
87 nine-b, chapter eighteen of this code, a certified audit report of
88 an approved certified public accountant shall be treated in the
89 same manner as a report of the chief inspector.

90 (g) On every examination, inquiry shall be made as to the
91 financial conditions and resources of the agency having
92 jurisdiction over the appropriations and levies disbursed by the
93 office and whether the requirements of the constitution and
94 statutory laws of the state and the ordinances and orders of the
95 agency have been properly complied with and also inquire into
96 the methods and accuracy of the accounts and such other
97 matters of audit and accounting as the chief inspector may
98 prescribe.

99 (h) A local government office that is subject to separate
100 examination under this section by the chief inspector may elect
101 to have a review performed to satisfy the annual examination
102 requirement if it is not subject to a single audit requirement
103 under federal regulations or if it is not otherwise required by
104 law or contract to undergo an annual audit and its expenditures
105 from all sources are less than three hundred thousand dollars
106 during the fiscal year for which the election is made: *Provided*,
107 That an audit must be performed at least once every three years
108 by the chief inspector and shall be performed whenever during
109 the course of a review the chief inspector determines that
110 special or unusual circumstances warrant making an audit.

111 (i) When not required to have an audit by then existing
112 federal regulations or by any law or contract provision and the
113 financial affairs of a local government are not examined
114 annually but are examined on a biennial or other periodic basis,

115 the chief inspector or his or her designee may, in his or her
116 discretion, after making an audit of one of the fiscal years,
117 make a review of the years remaining to be examined.

118 (j) The chief inspector or any authorized assistant may issue
119 subpoenas and compulsory process, direct the service thereof
120 by any sheriff, compel the attendance of witnesses and the
121 production of books and papers at any designated time and
122 place, selected in their respective county, and administer oaths.

123 (k) If any person refuses to appear before the chief inspec-
124 tor or his or her authorized assistant when required to do so,
125 refuses to testify on any matter or refuses to produce any books
126 or papers in his or her possession or under his or her control, he
127 or she is guilty of a misdemeanor and, upon conviction thereof,
128 shall be fined not more than one hundred dollars and impris-
129 oned in the county or regional jail not more than six months.

130 (l) A person convicted of willful false swearing in an
131 examination is guilty of a misdemeanor and, upon conviction
132 thereof, shall be fined not more than one hundred dollars and
133 imprisoned in the county or regional jail not more than six
134 months.

135 (m) Except as otherwise provided in this section, a copy of
136 the certified report of each examination shall be filed in the
137 office of the commissioner, chief inspector with the governing
138 body of the local government and with other offices as pre-
139 scribed in uniform procedures of the chief inspector.

140 (n) If any examination discloses misfeasance, malfeasance
141 or nonfeasance in office on the part of any public officer or
142 employee, a certified copy of the report shall be filed by the
143 chief inspector with the proper legal authority of the agency, the
144 prosecuting attorney of the county wherein the agency is
145 located and with the attorney general for such legal action as is

146 proper. At the time the certified audit report is filed, the chief
147 inspector shall notify the proper legal authority of the agency,
148 the prosecuting attorney and the attorney general in writing of
149 his or her recommendation as to the legal action that the chief
150 inspector considers proper, whether criminal prosecution or
151 civil action to effect restitution, or both.

152 (o) If the proper legal authority or prosecuting attorney,
153 within nine months of receipt of the certified audit report and
154 recommendations, refuses, neglects or fails to take efficient
155 legal action by a civil suit to effect restitution or by prosecuting
156 criminal proceedings to a final conclusion, in accordance with
157 the recommendations, the chief inspector may institute the
158 necessary proceedings or participate therein and prosecute the
159 proceedings in any court of the state to a final conclusion.

160 (p) A local government that is not a county board of
161 education may elect, by the first day of May of the fiscal year
162 to be audited, to have its annual examination performed by a
163 certified public accountant approved by the chief inspector to
164 perform the examinations. When this election is made, a copy
165 of the order of the governing body making the election shall be
166 filed with the chief inspector. An electing local government is
167 allowed to contract with any certified public accountant on the
168 chief inspector's then current list of approved certified public
169 accountants, unless the prosecuting attorney of the county in
170 which the local government is located timely submits to the
171 chief inspector a written request for the examination to be
172 performed by the chief inspector or a person appointed by the
173 chief inspector, or the chief inspector determines that a special
174 or unusual situation exists: *Provided*, That no less than once
175 every three-year period the audit of a local government shall be
176 performed by the office of chief inspector. The local govern-
177 ment shall follow the audit bid procurement procedures
178 established by the chief inspector in obtaining the audit:

179 *Provided, however,* That the chief inspector may elect to
180 conduct the audit of a local unit of government with one or
181 more members of his or her audit staff where, in the opinion of
182 the chief inspector, a special or unusual situation exists.

CHAPTER 18. EDUCATION.

ARTICLE 9B. STATE BOARD OF SCHOOL FINANCE.

§18-9B-13. Inspection and audit of school finance administration.

1 The board of finance may, through its duly authorized
2 representatives, make inspections and examinations of the fiscal
3 administration of a county school district. The inspection and
4 examination may extend to any matter or practice subject to
5 regulation by the state board. Regular and special examinations
6 may be made by a certified public accountant approved
7 pursuant to section seven, article nine, chapter six of this code
8 selected by the county board in accordance with nonemergency
9 regulations submitted by the chief inspector, or by the chief
10 inspector himself or herself. All examinations shall be made as
11 provided in section seven, article nine, chapter six of this code.
12 The board may make selective audits to determine the accuracy
13 of statements and reports made by a county board or superinten-
14 dent.

15 The report of the examination shall be certified to the
16 county board, which should include the identification of
17 procedures and practices found to not be in accordance with the
18 requirements of the state board. The county board shall comply
19 with the instructions forthwith.

20 The state board, through its duly authorized representatives,
21 shall have full access to all books, records, papers and docu-
22 ments of the county board.

CHAPTER 246

(Com. Sub. for H. B. 2310 — By Delegates
Amores, Staton, Beane and Mahan)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter twenty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section five, article five of said chapter, all relating to the public service commission; making certain motor vehicles subject to the safety and insurance rules of the public service commission; exempting certain vehicles from certain regulation of the public service commission; providing a minimum amount of required insurance for certain vehicles; eliminating the requirement of costs being assessed against the losing party; and clarifying the employment status of certain employees of the public service commission.

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; and that section five, article five of said chapter be amended and reenacted, all to read as follows:

Article

- 1. Purposes, Definitions and Exemptions.**
- 5. Powers and Duties of Commission.**

ARTICLE 1. PURPOSES, DEFINITIONS AND EXEMPTIONS.

§24A-1-3. Exemptions from chapter.

1 The provisions of this chapter, except where specifically
2 otherwise provided, do not apply to:

3 (1) Motor vehicles operated exclusively in the transporta-
4 tion of United States mail or in the transportation of newspa-
5 pers: *Provided*, That the vehicles and their operators are subject
6 to the safety rules promulgated by the commission;

7 (2) Motor vehicles owned and operated by the United States
8 of America, the state of West Virginia or any county, munic-
9 ipality or county board of education, urban mass transportation
10 authority established and maintained pursuant to article
11 twenty-seven, chapter eight of this code, or by any of their
12 departments, and any motor vehicles operated under a contract
13 with a county board of education exclusively for the transporta-
14 tion of children to and from school or other legitimate transpor-
15 tation for the schools as the commission may specifically
16 authorize;

17 (3) Motor vehicles used exclusively in the transportation of
18 agricultural or horticultural products, livestock, poultry and
19 dairy products from the farm or orchard on which they are
20 raised or produced to markets, processing plants, packing
21 houses, canneries, railway shipping points and cold storage
22 plants, and in the transportation of agricultural or horticultural
23 supplies to farms or orchards where they are to be used:
24 *Provided*, That the vehicles that are exempted by this subdivi-
25 sion and are also operated by common carriers by motor vehicle
26 or contract carriers by motor vehicle, and their operators are
27 subject to the safety and insurance rules promulgated by the
28 commission;

29 (4) Motor vehicles used exclusively in the transportation of
30 human or animal excreta;

31 (5) Motor vehicles used exclusively in ambulance service
32 or duly chartered rescue squad service;

33 (6) Motor vehicles used exclusively for volunteer fire
34 department service;

35 (7) Motor vehicles used exclusively in the transportation of
36 coal from mining operations to loading facilities for further
37 shipment by rail or water carriers: *Provided*, That the vehicles
38 and their operators are subject to the safety rules promulgated
39 by the commission and the vehicles that are exempted by this
40 subdivision and are also operated by common carriers by motor
41 vehicle or contract carriers by motor vehicle, and their opera-
42 tors are subject to the insurance rules promulgated by the
43 commission;

44 (8) Motor vehicles used by petroleum commission agents
45 and oil distributors solely for the transportation of petroleum
46 products and related automotive products when the transporta-
47 tion is incidental to the business of selling the products:
48 *Provided*, That the vehicles and their operators are subject to
49 the safety rules promulgated by the commission and the
50 vehicles that are exempted by this subdivision and are also
51 operated by common carriers by motor vehicle or contract
52 carriers by motor vehicle, and their operators are subject to the
53 insurance rules promulgated by the commission;

54 (9) Motor vehicles owned, leased by or leased to any person
55 and used exclusively for the transportation of processed
56 source-separated recycled materials, generated by commercial,
57 institutional and industrial customers, transported free of charge
58 from the customers to a facility for further processing: *Pro-*
59 *vided*, That the vehicles and their operators shall be subject to
60 the safety rules promulgated by the commission and the
61 vehicles that are exempted by this subdivision and are also
62 operated by common carriers by motor vehicle or contract
63 carriers by motor vehicle, and their operators are subject to the
64 insurance rules promulgated by the commission;

65 (10) Motor vehicles specifically preempted from state
66 economic regulation of intrastate motor carrier operations by
67 the provisions of 49 U. S. C. §14501 as amended by title I,
68 section 103 of the federal “Interstate Commerce Commission
69 Termination Act of 1995”: *Provided*, That the vehicles and their
70 operators are subject to the safety regulations promulgated by
71 the commission and the vehicles that are exempted by this
72 subdivision and are also operated by common carriers by motor
73 vehicle or contract carriers by motor vehicle, and their opera-
74 tors are subject to the insurance rules promulgated by the
75 commission;

76 (11) Motor vehicles designated by the West Virginia bureau
77 of senior services for use and operation by local county aging
78 programs: *Provided*, That the vehicles and their operators are
79 subject to the safety rules promulgated by the commission;

80 (12) Motor vehicles designated by the West Virginia
81 division of public transit operated by organizations that receive
82 federal grants from the federal transit administration: *Provided*,
83 That the vehicles and their operators are subject to the safety
84 and insurance rules promulgated by the commission.

ARTICLE 5. POWERS AND DUTIES OF COMMISSION.

§24A-5-5. Further regulatory powers of the commission.

1 (a) The commission shall prescribe rules of practice and
2 procedure including, the method and manner of holding
3 hearings, taking evidence, and entering orders. In the investiga-
4 tion, preparation and hearing of cases, the commission is not
5 bound by the technical rules of pleading and evidence, but may
6 exercise discretion to facilitate its efforts to understand and
7 learn all the facts bearing upon the right and justness of the
8 matters before it.

9 (b) The commission shall employ personnel as may be
10 necessary to carry out the provisions of this chapter and fix
11 their respective salaries or compensation. The commission may
12 designate employees as it deems necessary to take evidence at
13 any hearing held or required by the provisions of this chapter.
14 These employees are empowered to administer oaths in all parts
15 of the state so far as the exercise of this power is properly
16 incidental to the performance of their duties in accordance with
17 the provisions of this chapter.

18 (c) The commission shall prescribe a schedule of fees to
19 accompany (i) applications for certificates of convenience and
20 necessity, (ii) applications for permits, and (iii) other filings and
21 recordings of other papers with the commission. The commis-
22 sion shall prescribe a schedule of fees to be charged for (i) the
23 certification of all records and papers (ii) the payment of
24 witnesses and (iii) other costs necessary and incident to
25 hearings before it or its employees. Sums collected in accor-
26 dance with this subsection, except witness fees, are to be paid
27 into the state treasury and credited to the public service
28 commission motor carrier fund provided for in section six,
29 article six of this chapter. Witness fees are to be paid to the
30 persons entitled to them.

31 (d) The commission shall establish a system of accounts to
32 be kept by motor carriers; or classify motor carriers and
33 establish a system of accounts for each class. The commission
34 shall prescribe the manner in which the accounts are to be kept.
35 It may prescribe the form of accounts, records, and memoranda
36 to be kept by the motor carriers, including the accounts,
37 records, and memoranda for the movement of traffic, the
38 receipts and expenditures of money, and any other forms,
39 records and memoranda which in the judgment of the commis-
40 sion may be necessary to carry out any of the provisions of this
41 chapter.

42 (e) The commission shall require persons subject to the
43 provisions of this chapter to furnish any information in their
44 possession or obtainable from their accounting or other records,
45 respecting rates, charges, classifications or practices in conduct-
46 ing their business. The commission has the authority to inspect
47 any books, papers or reports. Any statements required by this
48 subsection are to be under oath when required by the commis-
49 sion. The form of all reports required under this chapter are to
50 be prescribed by the commission.

51 (f) The commission as a whole or any of its members or
52 designated employees, shall subpoena witnesses, take testimony
53 and administer oaths to any witness in any proceeding or
54 examination instituted before it or conducted by it with
55 reference to any matter within its jurisdiction. In all hearings or
56 proceedings before the commission or its designated employ-
57 ees, the evidence of witnesses and the production of documen-
58 tary evidence may be required at any designated place of
59 hearing within the state. In the case of disobedience to a
60 subpoena or other process, the commission or any party to the
61 proceedings before the commission may invoke the aid of any
62 circuit court in the state in requiring the evidence and testimony
63 of witnesses and the production of papers, books, and docu-
64 ments. The court, in the case of a refusal to obey the subpoena
65 issued to any person or to any motor carrier subject to the
66 provisions of this chapter, shall issue an order requiring the
67 person or motor carrier to appear before the commission or its
68 designated employees and produce all requested books and
69 papers and give evidence relating to the matter in question. Any
70 failure to obey the order of the court may be punished by the
71 court as contempt. A claim that testimony or evidence may tend
72 to incriminate the person giving the testimony or evidence does
73 not excuse the person from testifying, but the person may not
74 be prosecuted for any offense concerning which he or she has
75 been compelled to testify.

76 (g) The commission shall require common carriers by
77 motor vehicle and contract carriers by motor vehicle subject to
78 the provisions of this chapter either to procure insurance from
79 a company authorized to write insurance in West Virginia, to
80 qualify as a self-insurer, or to deposit security upon terms and
81 conditions and for limits of liability as the commission shall
82 determine to be necessary for the reasonable protection of the
83 traveling, shipping, and general public against injury, loss,
84 damage or default for which the carrier may be liable. It shall
85 prescribe rules and regulations governing the filing of evidence
86 of insurance and security with the commission. In fixing the
87 amount of the insurance policy or policies, the qualifications as
88 a self-insurer, or the deposit of security, the commission shall
89 give due consideration to the character and amount of traffic,
90 the value of the property transported, the number of persons
91 affected, and the degree of danger involved in any motor carrier
92 operation: *Provided*, That the amount set by the commission for
93 for-hire vehicles, that haul nonhazardous property with a gross
94 vehicle weight of ten thousand or more pounds, shall be at least
95 seven hundred fifty thousand dollars.

96 (h) The commission shall cooperate with the federal
97 government or any other commission or organized delegated
98 authority to regulate interstate or foreign commerce by motor
99 vehicles to ensure that the transportation of persons and
100 property by motor vehicles in interstate and foreign commerce
101 into and through the state of West Virginia may be regulated
102 and the laws of the United States and the state of West Virginia
103 enforced and administered cooperatively in the public interest.

104 (i) The commission shall make agreements on behalf of the
105 state of West Virginia with any other state or states providing
106 for reciprocal rights, privileges, and courtesies between the
107 licensees or holders of certificates and permits of the state or
108 states and the state of West Virginia. These agreements may
109 include provisions regarding certificates and permits, fees,

110 assessments, and uniform vehicle identification cards, and the
111 transportation of either persons or property into or through the
112 respective state or states and the state of West Virginia. All
113 existing agreements between a state or states and the state of
114 West Virginia for reciprocal rights, privileges, and courtesies
115 may, provided constitutional and contractual rights are not
116 violated, be declared void by the commission, and new agree-
117 ments negotiated.

118 (j) The commission shall promulgate (i) safety rules
119 applicable to motor vehicles subject to the provisions of this
120 chapter, (ii) rules governing the qualifications and maximum
121 hours of service of drivers and chauffeurs of common and
122 contract carriers by motor vehicle of passengers and property
123 subject to the provisions of this chapter and (iii) any other rules
124 that the commission may deem proper to carry out the provi-
125 sions and intent of this chapter.

CHAPTER 247

(Com. Sub. for H. B. 2830 — By Delegates
Manuel, Pethel and Faircloth)

[Passed April 12, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifty-three, article three, chapter eleven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the refund rights of a purchaser where the property is nonexistent.

Be it enacted by the Legislature of West Virginia:

That section fifty-three, 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-3-53. Refund to purchaser of payment made at deputy commissioner's sale where property is nonexistent.

1 If, within forty-five days following the approval of the sale
 2 by the auditor, the purchaser discovers that the property
 3 purchased at the sale is nonexistent, the purchaser shall submit
 4 the abstract or certificate of an attorney-at-law that the property
 5 is nonexistent. Upon receipt of the abstract or certificate, the
 6 deputy commissioner shall cause the moneys so paid to be
 7 refunded. Upon refund of the amount bid at a deputy commis-
 8 sioner's sale, the deputy commissioner shall inform the assessor
 9 that the property does not exist for the purpose of having the
 10 assessor correct the error. For failure to meet this requirement,
 11 the purchaser shall lose all benefits of his purchase.

CHAPTER 248

**(Com. Sub. for S. B. 244 — By Senators Wooton, Jackson,
 Kessler, Chafin, Mitchell, Rowe, Hunter, Ross and Burnette)**

[Passed April 14, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section nineteen, article eighteen, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the antitrust

enforcement fund; and requiring funds in excess of three hundred thousand dollars to revert to the general revenue fund.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 18. ANTITRUST ACT; RESTRAINT OF TRADE.

§47-18-19. Antitrust enforcement fund.

1 All money received by the state as a result of actions by the
2 attorney general pursuant to this article or to the federal
3 antitrust laws shall be placed in a separate fund by the state
4 treasurer, to be known as the antitrust enforcement fund, and
5 shall be used solely for the payment of fees, costs and expenses
6 incurred by the attorney general in connection with antitrust
7 enforcement activities and the first three hundred thousand
8 dollars in this fund shall not expire at the end of each fiscal year
9 but shall, by operation of law, be automatically reappropriated
10 from year to year and all sums in excess of three hundred
11 thousand dollars remaining in such fund shall expire at the end
12 of each fiscal year and shall revert to the general revenue fund.

CHAPTER 249

(Com. Sub. for H. B. 2851 — By Delegates
Staton, J. Smith and Keener)

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and seventeen, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three, article seven-a, chapter eighteen of said code, all relating to compliance of the public employees retirement system, and the state teachers retirement system, 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 the public employees retirement system; including within the definition of political subdivision the regional community policing institute; clarification of definition of regular interest; and addition of definition of pick up service in the teachers retirement system.

Be it enacted by the Legislature of West Virginia:

That sections two and seventeen, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section three, article seven-a, chapter eighteen 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.

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.

§5-10-2. Definitions.

§5-10-17. Retirement system membership.

§5-10-2. Definitions.

1 The following words and phrases as used in this article,
2 unless a different meaning is clearly indicated by the context,
3 have the following meanings:

4 (1) "State" means the state of West Virginia;

5 (2) "Retirement system" or "system" means the West
6 Virginia public employees retirement system created and
7 established by this article;

8 (3) "Board of trustees" or "board" means the board of
9 trustees of the West Virginia public employees retirement
10 system;

11 (4) "Political subdivision" means the state of West Virginia,
12 a county, city or town in the state; a school corporation or
13 corporate unit; any separate corporation or instrumentality
14 established by one or more counties, cities or towns, as
15 permitted by law; any corporation or instrumentality supported
16 in most part by counties, cities or towns; any public corporation
17 charged by law with the performance of a governmental
18 function and whose jurisdiction is coextensive with one or more
19 counties, cities or towns: *Provided*, That any mental health
20 agency participating in the public employees retirement system
21 before the first day of July, one thousand nine hundred ninety-
22 seven, is considered a political subdivision solely for the
23 purpose of permitting those employees who are members of the
24 public employees retirement system to remain members and
25 continue to participate in the retirement system at their option
26 after the first day of July, one thousand nine hundred ninety-

27 seven: *Provided, however,* That the regional community
28 policing institute which participated in the public employees
29 retirement system before the first day of July, two thousand is
30 considered a political subdivision solely for the purpose of
31 permitting those employees who are members of the public
32 employees retirement system to remain members and continue
33 to participate in the public employees retirement system after
34 the first day of July, two thousand;

35 (5) "Participating public employer" means the state of West
36 Virginia, any board, commission, department, institution or
37 spending unit, and includes any agency created by rule of the
38 supreme court of appeals having full-time employees, which for
39 the purposes of this article is considered a department of state
40 government; and any political subdivision in the state which has
41 elected to cover its employees, as defined in this article, under
42 the West Virginia public employees retirement system;

43 (6) "Employee" means any person who serves regularly as
44 an officer or employee, full time, on a salary basis, whose
45 tenure is not restricted as to temporary or provisional appoint-
46 ment, in the service of, and whose compensation is payable, in
47 whole or in part, by any political subdivision, or an officer or
48 employee whose compensation is calculated on a daily basis
49 and paid monthly or on completion of assignment, including
50 technicians and other personnel employed by the West Virginia
51 national guard whose compensation, in whole or in part, is paid
52 by the federal government: *Provided,* That members of the
53 Legislature, the clerk of the House of Delegates, the clerk of the
54 Senate, employees of the Legislature whose term of employ-
55 ment is otherwise classified as temporary and who are em-
56 ployed to perform services required by the Legislature for its
57 regular sessions or during the interim between regular sessions
58 and who have been or are employed during regular sessions or
59 during the interim between regular sessions in seven consecu-
60 tive calendar years, as certified by the clerk of the house in

61 which the employee served, members of the legislative body of
62 any political subdivision and judges of the state court of claims
63 are considered to be employees, anything contained in this
64 article to the contrary notwithstanding. In any case of doubt as
65 to who is an employee within the meaning of this article, the
66 board of trustees shall decide the question;

67 (7) "Member" means any person who is included in the
68 membership of the retirement system;

69 (8) "Retirant" means any member who retires with an
70 annuity payable by the retirement system;

71 (9) "Beneficiary" means any person, except a retirant, who
72 is entitled to, or will be entitled to, an annuity or other benefit
73 payable by the retirement system;

74 (10) "Service" means personal service rendered to a
75 participating public employer by an employee, as defined in this
76 article, of a participating public employer;

77 (11) "Prior service" means service rendered prior to the first
78 day of July, one thousand nine hundred sixty-one, to the extent
79 credited a member as provided in this article;

80 (12) "Contributing service" means service rendered by a
81 member within this state and for which the member made
82 contributions to a public retirement system account of this state,
83 to the extent credited him or her as provided by this article. This
84 revised definition is retroactive and applicable to the first day
85 of April, one thousand nine hundred eighty-eight, and thereaf-
86 ter;

87 (13) "Credited service" means the sum of a member's prior
88 service credit and contributing service credit standing to his or
89 her credit as provided in this article;

90 (14) "Limited credited service" means service by employ-
91 ees of the West Virginia educational broadcasting authority, in
92 the employment of West Virginia university, during a period
93 when the employee made contributions to another retirement
94 system, as required by West Virginia university, and did not
95 make contributions to the public employees retirement system:
96 *Provided*, That while limited credited service can be used for
97 the formula set forth in section twenty-one, subsection (e) of
98 this article, it may not be used to increase benefits calculated
99 under section twenty-two of this article;

100 (15) "Compensation" means the remuneration paid a
101 member by a participating public employer for personal
102 services rendered by him or her to the participating public
103 employer. In the event a member's remuneration is not all paid
104 in money, his or her participating public employer shall fix the
105 value of the portion of his or her remuneration which is not paid
106 in money;

107 (16) "Final average salary" means either:

108 (A) The average of the highest annual compensation
109 received by a member (including a member of the Legislature
110 who participates in the retirement system in the year one
111 thousand nine hundred seventy-one or thereafter) during any
112 period of three consecutive years of his or her credited service
113 contained within his or her ten years of credited service
114 immediately preceding the date his or her employment with a
115 participating public employer last terminated; or

116 (B) If he or she has less than five years of credited service,
117 the average of the annual rate of compensation received by him
118 or her during his or her total years of credited service; and in
119 determining the annual compensation, under either paragraph
120 (A) or (B) of this subdivision, of a member of the Legislature
121 who participates in the retirement system as a member of the

122 Legislature in the year one thousand nine hundred seventy-one
123 or in any year thereafter, his or her actual legislative compensa-
124 tion (the total of all compensation paid under sections two,
125 three, four and five, article two-a, chapter four of this code) in
126 the year one thousand nine hundred seventy-one or in any year
127 thereafter, plus any other compensation he or she receives in
128 any year from any other participating public employer including
129 the state of West Virginia, without any multiple in excess of
130 one times his or her actual legislative compensation and other
131 compensation, shall be used: *Provided*, That “final average
132 salary” for any former member of the Legislature or for any
133 member of the Legislature in the year one thousand nine
134 hundred seventy-one who, in either event, was a member of the
135 Legislature on the thirtieth day of November, one thousand nine
136 hundred sixty-eight, or the thirtieth day of November, one
137 thousand nine hundred sixty-nine, or the thirtieth day of
138 November, one thousand nine hundred seventy, or on the
139 thirtieth day of November in any one or more of those three
140 years, and who participated in the retirement system as a
141 member of the Legislature in any one or more of those years
142 means: (i) Either (notwithstanding the provisions of this
143 subdivision preceding this proviso) one thousand five hundred
144 dollars multiplied by eight, plus the highest other compensation
145 the former member or member received in any one of the three
146 years from any other participating public employer including
147 the state of West Virginia; or (ii) “final average salary”
148 determined in accordance with paragraph (A) or (B) of this
149 subdivision, whichever computation produces the higher final
150 average salary (and in determining the annual compensation
151 under (ii) of this proviso, the legislative compensation of the
152 former member shall be computed on the basis of one thousand
153 five hundred dollars multiplied by eight, and the legislative
154 compensation of the member shall be computed on the basis set
155 forth in the provisions of this subdivision immediately preced-
156 ing this proviso or on the basis of one thousand five hundred

157 dollars multiplied by eight, whichever computation as to the
158 member produces the higher annual compensation);

159 (17) "Accumulated contributions" means the sum of all
160 amounts deducted from the compensations of a member and
161 credited to his or her individual account in the members'
162 deposit fund, together with regular interest on the contributions;

163 (18) "Regular interest" means the rate or rates of interest
164 per annum, compounded annually, as the board of trustees
165 adopts from time to time;

166 (19) "Annuity" means an annual amount payable by the
167 retirement system throughout the life of a person. All annuities
168 shall be paid in equal monthly installments, using the upper
169 cent for any fraction of a cent;

170 (20) "Annuity reserve" means the present value of all
171 payments to be made to a retirant or beneficiary of a retirant on
172 account of any annuity, computed upon the basis of such
173 mortality and other tables of experience, and regular interest, as
174 the board of trustees adopts from time to time;

175 (21) "Retirement" means a member's withdrawal from the
176 employ of a participating public employer with an annuity
177 payable by the retirement system;

178 (22) "Actuarial equivalent" means a benefit of equal value
179 computed upon the basis of such mortality table and regular
180 interest as the board of trustees adopts from time to time; and

181 (23) "Retroactive service" means: (1) Service an employee
182 was entitled to, but which the employer has not withheld or paid
183 for; or (2) that service from the first day of July, one thousand
184 nine hundred sixty-one, and the date an employer decides to
185 become a participating member of the public employees
186 retirement system; or (3) service prior to the first day of July,

187 one thousand nine hundred sixty-one, for which the employee
188 is not entitled to prior service at no cost in accordance with 162
189 CSR 5.16;

190 (24) "Required beginning date" means the first day of April
191 of the calendar year following the later of: (A) the calendar year
192 in which the member attains age seventy and one-half, or (B)
193 the calendar year in which the member ceases providing service
194 covered under this system to a participating employer;

195 (25) "Internal Revenue Code" means the Internal Revenue
196 Code of 1986, as amended; and

197 (26) "Plan year" means the same as referenced in section
198 forty-two of this article.

§5-10-17. Retirement system membership.

1 The membership of the retirement system consists of the
2 following persons:

3 (a) All employees, as defined in section two of this article,
4 who are in the employ of a political subdivision the day
5 preceding the date it becomes a participating public employer
6 and who continue in the employ of the participating public
7 employer on and after that date shall become members of the
8 retirement system; and all persons who become employees of
9 a participating public employer on or after that date shall
10 thereupon become members of the system; except as provided
11 in subdivisions (b) and (c) of this section.

12 (b) The membership of the retirement system shall not
13 include any person who is a member of, or who has been retired
14 by, any of the state teachers retirement systems, the judges
15 retirement system, the retirement system of the division of
16 public safety, the deputy sheriff retirement system or any
17 municipal retirement system for either, or both, policemen or

18 firemen; and the bureau of employment programs, by the
19 commissioner of the bureau, may elect whether its employees
20 will accept coverage under this article or be covered under the
21 authorization of a separate enactment: *Provided*, That the
22 exclusions of membership shall not apply to any member of the
23 state Legislature, the clerk of the House of Delegates, the clerk
24 of the state Senate or to any member of the legislative body of
25 any political subdivision provided he or she once becomes a
26 contributing member of the retirement system: *Provided*,
27 *however*, That any retired member of the retirement system of
28 the division of public safety, the deputy sheriff retirement
29 system and any retired member of any municipal retirement
30 system for either, or both, policemen or firemen may on and
31 after the effective date of this section become a member of the
32 retirement system as provided in this article, without receiving
33 credit for prior service as a municipal policeman or fireman or
34 as a member of the division of public safety or of the deputy
35 sheriff retirement system: *Provided further*, That the member-
36 ship of the retirement system does not include any person who
37 becomes employed by the Prestera center for mental health
38 services, valley comprehensive mental health center, Westbrook
39 health services or eastern panhandle mental health center on or
40 after the first day of July, one thousand nine hundred ninety-
41 seven: *And provided further*, That membership of the retirement
42 system does not include any person who becomes a member of
43 the federal railroad retirement act on or after the first day of
44 July, two thousand.

45 (c) Any member of the state Legislature, the clerk of the
46 House of Delegates, the clerk of the state Senate and any
47 employee of the state Legislature whose employment is
48 otherwise classified as temporary and who is employed to
49 perform services required by the Legislature for its regular
50 sessions or during the interim between regular sessions and who
51 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.

71 (e) Any individual who is a leased employee is not eligible
72 to participate in the system. For the purposes of this article, the
73 term "leased employee" means any individual who performs
74 services as an independent contractor or pursuant to an agree-
75 ment with an employee leasing organization or other similar
76 organization. If a question arises regarding the status of an
77 individual as a leased employee, the board has final authority to
78 decide the question.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-3. Definitions.

1 "Teacher member" means the following persons, if
2 regularly employed for full-time service: (a) Any person

3 employed for instructional service in the public schools of West
4 Virginia; (b) principals; (c) public school librarians; (d)
5 superintendents of schools and assistant county superintendents
6 of schools; (e) any county school attendance director holding a
7 West Virginia teacher's certificate; (f) the executive secretary
8 of the retirement board; (g) members of the research, extension,
9 administrative or library staffs of the public schools; (h) the
10 state superintendent of schools, heads and assistant heads of the
11 divisions under his supervision, or any other employee thereun-
12 der performing services of an educational nature; (i) employees
13 of the state board of education who are performing services of
14 an educational nature; (j) any person employed in a nonteaching
15 capacity by the state board of education, the West Virginia
16 board of regents [abolished], any county board of education, the
17 state department of education or the teachers retirement board,
18 if such person was formerly employed as a teacher in the public
19 schools; (k) all classroom teachers, principals and educational
20 administrators in schools under the supervision of the depart-
21 ment of corrections, the division of health or the division of
22 human services; and (l) employees of the state board of school
23 finance, if such person was formerly employed as a teacher in
24 the public schools.

25 "Nonteaching member" means any person, except a teacher
26 member, who is regularly employed for full-time service by: (a)
27 Any county board of education; (b) the state board of education;
28 (c) the West Virginia board of regents [abolished]; or (d) the
29 teachers retirement board.

30 "Members of the administrative staff of the public schools"
31 means deans of instruction, deans of men, deans of women, and
32 financial and administrative secretaries.

33 "Members of the extension staff of the public schools"
34 means every agricultural agent, boys' and girls' club agent, and

35 every member of the agricultural extension staff whose work is
36 not primarily stenographic, clerical or secretarial.

37 “Retirement system” means the state teachers retirement
38 system provided for in this article.

39 “Present teacher” means any person who was a teacher
40 within the thirty-five years beginning the first day of July, one
41 thousand nine hundred thirty-four, and whose membership in
42 the retirement system is currently active.

43 “New entrant” means a teacher who is not a present teacher.

44 “Regularly employed for full-time service” means employ-
45 ment in a regular position or job throughout the employment
46 term regardless of the number of hours worked or the method
47 of pay.

48 “Employment term” means employment for at least ten
49 months, a month being defined as twenty employment days.

50 “Present member” means a present teacher who is a
51 member of the retirement system.

52 “Total service” means all service as a teacher while a
53 member of the retirement system since last becoming a member
54 and, in addition thereto, credit for prior service, if any.

55 “Prior service” means all service as a teacher completed
56 prior to the first day of July, one thousand nine hundred forty-
57 one, and all service of a present member who was employed as
58 a teacher, and did not contribute to a retirement account
59 because he was legally ineligible for membership during the
60 service.

61 “Pick-up service” means service that a member was entitled
62 to, but which the employer has not withheld or paid for.

63 “Average final salary” means the average of the five
64 highest fiscal year salaries earned as a member within the last
65 fifteen fiscal years of total service credit, including military
66 service as provided herein, or if total service is less than fifteen
67 years, the average annual salary for the period on which
68 contributions were made.

69 “Accumulated contributions” means all deposits and all
70 deductions from the earnable compensation of a contributor
71 minus the total of all supplemental fees deducted from his
72 compensation.

73 “Regular interest” means interest at four percent com-
74 pounded annually, or a higher earnable rate if set forth in the
75 formula established in legislative rules, series seven of the
76 consolidated public retirement board.

77 “Refund interest” means interest compounded, according to
78 the formula established in legislative rules, series seven of the
79 consolidated public retirement board.

80 “Employer” means the agency of and within the state which
81 has employed or employs a member.

82 “Contributor” means a member of the retirement system
83 who has an account in the teachers accumulation fund.

84 “Beneficiary” means the recipient of annuity payments
85 made under the retirement system.

86 “Refund beneficiary” means the estate of a deceased
87 contributor, or a person as he shall have nominated as benefi-
88 ciary of his contributions by written designation duly executed
89 and filed with the retirement board.

90 “Earnable compensation” means the full compensation
91 actually received by members for service as teachers whether

92 or not a part of the compensation is received from other funds,
93 federal or otherwise, than those provided by the state or its
94 subdivisions. Allowances from employers for maintenance of
95 members shall be considered a part of earnable compensation
96 for such members whose allowances were approved by the
97 teachers retirement board and contributions to the teachers
98 retirement system were made, in accordance therewith, on or
99 before the first day of July, one thousand nine hundred eighty.

100 “Annuities” means the annual retirement payments for life
101 granted beneficiaries in accordance with this article.

102 “Member” means a member of the retirement system.

103 “Public schools” means all publicly supported schools,
104 including normal schools, colleges and universities in this state.

105 “Deposit” means a voluntary payment to his account by a
106 member.

107 “Plan year” means the twelve-month period commencing
108 on the first day of July and ending the following thirtieth day of
109 June of any designated year.

110 “Internal Revenue Code” means the Internal Revenue Code
111 of 1986, as amended.

112 “Required beginning date” means the first day of April of
113 the calendar year following the later of: (a) the calendar year in
114 which the member attains age seventy and one-half, or (b) the
115 calendar year in which the member retires or ceases covered
116 employment under the system.

117 The masculine gender shall be construed so as to include
118 the feminine.

119 Age in excess of seventy years shall be considered to be
120 seventy years.

CHAPTER 250

(H. B. 2080 — By Delegate Michael)

[Passed April 14, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section seventeen, article seven-a, chapter eighteen of said code, all relating to placing corresponding provisions in the teachers retirement system and the public employees retirement system; providing public employee retirement system service credit and teachers retirement system service credit for time worked in CETA (Comprehensive Employment and Training Act) programs; requirements; setting forth maximum attainable service credit; setting forth applicable time period to obtain service credit; specifying cost of service credit; granting service credit in teachers retirement system for former and present members of the state police death, disability and retirement fund in the same manner as is in the public employees retirement system; setting forth conditions to be met for credit; and setting forth required documentation to substantiate time for the service credit.

Be it enacted by the Legislature of West Virginia:

That section fourteen, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be

amended and reenacted; and that section seventeen, article seven-a, chapter eighteen 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.

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.

§5-10-14. Service credit; retroactive provisions.

1 (a) The board of trustees shall credit each member with the
2 prior service and contributing service to which he or she is
3 entitled based upon such rules as the board of trustees shall
4 from time to time adopt and based upon the following:

5 (1) In no event may less than ten days of service rendered
6 by a member in any calendar month be credited as a month of
7 service: *Provided*, That for employees of the state Legislature
8 whose term of employment is otherwise classified as temporary
9 and who are employed to perform services required by the
10 Legislature for its regular sessions or during the interim
11 between regular sessions and who have been or are so em-
12 ployed during regular sessions or during the interim between
13 regular sessions in seven consecutive calendar years, service
14 credit of one month shall be awarded for each ten days em-
15 ployed in the interim between regular sessions, which interim

16 days shall be cumulatively calculated so that any ten days,
17 regardless of calendar month or year, shall be calculated toward
18 any award of one month of service credit;

19 (2) Except for hourly employees, ten or more months of
20 service credit earned in any calendar year shall be credited as a
21 year of service: *Provided*, That no more than one year of
22 service may be credited to any member for all service rendered
23 by him or her in any calendar year and no days may be carried
24 over by a member from one calendar year to another calendar
25 year where the member has received a full year credit for that
26 year; and

27 (3) Service may be credited to a member who was em-
28 ployed by a political subdivision if his or her employment
29 occurred within a period of thirty years immediately preceding
30 the date the political subdivision became a participating public
31 employer.

32 (b) The board of trustees shall grant service credit to
33 employees of boards of health, the clerk of the House of
34 Delegates and the clerk of the state Senate, or to any former and
35 present member of the state teachers retirement system who
36 have been contributing members for more than three years, for
37 service previously credited by the state teachers retirement
38 system and shall require the transfer of the member's contribu-
39 tions to the system and shall also require a deposit, with
40 interest, of any withdrawals of contributions any time prior to
41 the member's retirement. Repayment of withdrawals shall be as
42 directed by the board of trustees.

43 (c) Court reporters who are acting in an official capacity,
44 although paid by funds other than the county commission or
45 state auditor, may receive prior service credit for time served in
46 that capacity.

47 (d) Active members who previously worked in CETA
48 (Comprehensive Employment and Training Act) may receive
49 service credit for time served in that capacity: *Provided*, That
50 in order to receive service credit under the provisions of this
51 subsection the following conditions must be met: (1) The
52 member must have moved from temporary employment with
53 the participating employer to permanent full time employment
54 with the participating employer within one hundred twenty days
55 following the termination of the member's CETA employment;
56 (2) the board must receive evidence that establishes to a
57 reasonable degree of certainty as determined by the board that
58 the member previously worked in CETA; and (3) the member
59 shall pay to the board an amount equal to the employer and
60 employee contribution plus interest at the amount set by the
61 board for the amount of service credit sought pursuant to this
62 subsection: *Provided, however*, That the maximum service
63 credit that may be obtained under the provisions of this
64 subsection is two years: *Provided further*, That a member must
65 apply and pay for the service credit allowed under this subsec-
66 tion and provide all necessary documentation by the thirty-first
67 day of December, two thousand one.

68 (e) Employees of the state Legislature whose terms of
69 employment are otherwise classified as temporary and who are
70 employed to perform services required by the Legislature for its
71 regular sessions or during the interim time between regular
72 sessions shall receive service credit for the time served in that
73 capacity in accordance with the following. For purposes of this
74 section the term "regular session" means day one through day
75 sixty of a sixty-day legislative session or day one through day
76 thirty of a thirty-day legislative session. Employees of the state
77 Legislature whose term of employment is otherwise classified
78 as temporary and who are employed to perform services
79 required by the Legislature for its regular sessions or during the
80 interim time between regular sessions and who have been or are
81 employed during regular sessions or during the interim time

82 between regular sessions in seven consecutive calendar years,
83 as certified by the clerk of the houses in which the employee
84 served, shall receive service credit of six months for all regular
85 sessions served, as certified by the clerk of the houses in which
86 the employee served, or shall receive service credit of three
87 months for each regular thirty-day session served prior to one
88 thousand nine hundred seventy-one, as certified by the clerk of
89 the houses in which the employee served, and shall receive
90 service credit of one month for each ten days served during the
91 interim between regular sessions, which interim days shall be
92 cumulatively calculated so that any ten days, regardless of
93 calendar month or year, shall be calculated toward any award
94 of one month of service credit: *Provided*, That no more than
95 one year of service may be credited to any temporary legislative
96 employee for all service rendered by that employee in any
97 calendar year and no days may be carried over by a temporary
98 legislative employee from one calendar year to another calendar
99 year where the member has received a full year credit for that
100 year. Service credit awarded for legislative employment
101 pursuant to this section shall be used for the purpose of
102 calculating that member's retirement annuity, pursuant to
103 section twenty-two of this article, and determining eligibility as
104 it relates to credited service, notwithstanding any other provi-
105 sion of this section. Certification of employment for a complete
106 legislative session and for interim days shall be determined by
107 the clerk of the houses in which the employee served, based
108 upon employment records. Service of fifty-five days of a
109 regular session constitutes an absolute presumption of service
110 for a complete legislative session, and service of twenty-seven
111 days of a thirty-day regular session occurring prior to one
112 thousand nine hundred seventy-one constitutes an absolute
113 presumption of service for a complete legislative session. Once
114 a legislative employee has been employed during regular
115 sessions for seven consecutive years or has become a full-time
116 employee of the Legislature, that employee shall receive the

117 service credit provided in this section for all regular and interim
118 sessions, and interim days worked by that employee, as
119 certified by the clerk of the houses in which the employee
120 served, regardless of when the session or interim legislative
121 employment occurred: *Provided, however,* That regular session
122 legislative employment for seven consecutive years may be
123 served in either or both houses of the Legislature.

124 Any employee may purchase retroactive service credit for
125 periods of employment in which contributions were not
126 deducted from the employee's pay. In the purchase of service
127 credit for employment prior to the year one thousand nine
128 hundred eighty-nine in any department, including the Legisla-
129 ture, which operated from the general revenue fund and which
130 was not expressly excluded from budget appropriations in
131 which blanket appropriations were made for the state's share of
132 public employees' retirement coverage in the years prior to the
133 year one thousand nine hundred eighty-nine, the employee shall
134 pay the employee's share. Other employees shall pay the state's
135 share and the employee's share to purchase retroactive service
136 credit. Where an employee purchases service credit for employ-
137 ment which occurred after the year one thousand nine hundred
138 eighty-eight, that employee shall pay for the employee's share
139 and the employer shall pay its share for the purchase of
140 retroactive service credit: *Provided,* That no legislative
141 employee and no current or former member of the Legislature
142 may be required to pay any interest or penalty upon the
143 purchase of retroactive service credit in accordance with the
144 provisions of this section where the employee was not eligible
145 to become a member during the years he or she is purchasing
146 retroactive credit for or had the employee attempted to contrib-
147 ute to the system during the years he or she is purchasing
148 retroactive service credit for and such contributions would have
149 been refused by the board: *Provided, however,* That a legisla-
150 tive employee purchasing retroactive credit under this section
151 does so within twenty-four months of becoming a member of

152 the system or no later than the last day of December, two
153 thousand five, whichever occurs last: *Provided further*, That
154 once a legislative employee becomes a member of the retire-
155 ment system, he or she may purchase retroactive service credit
156 for any time he or she was employed by the Legislature and did
157 not receive service credit. Any service credit purchased shall be
158 credited as six months for each sixty-day session worked and
159 three months for each thirty-day session worked, and credit for
160 interim employment as provided in this subsection: *And*
161 *provided further*, That this legislative service credit shall also
162 be used for months of service in order to meet the sixty-month
163 requirement for the payments of a temporary legislative
164 employee member's retirement annuity: *And provided further*,
165 That no legislative employee may be required to pay for any
166 service credit beyond the actual time he or she worked regard-
167 less of the service credit which is credited to him or her
168 pursuant to this section: *And provided further*, That any
169 legislative employee may request a recalculation of his or her
170 credited service to comply with the provisions of this section at
171 any time.

172 (f) Notwithstanding any provision to the contrary, the seven
173 consecutive calendar years requirement and the service credit
174 requirements set forth in this section shall be applied retroac-
175 tively to all periods of legislative employment prior to the
176 passage of this section, including any periods of legislative
177 employment occurring before the seven consecutive calendar
178 years referenced in this section.

179 (g) The board of trustees shall grant service credit to any
180 former or present member of the state police death, disability
181 and retirement fund who has been a contributing member of this
182 system for more than three years, for service previously
183 credited by the state police death, disability and retirement fund
184 if the member transfers all of his or her contributions to the
185 state police death, disability and retirement fund to the system

186 created in this article, including repayment of any amounts
187 withdrawn any time from the state police death, disability and
188 retirement fund by the member seeking the transfer allowed in
189 this subsection: *Provided*, That there shall be added by the
190 member to the amounts transferred or repaid under this
191 paragraph an amount which shall be sufficient to equal the
192 contributions he or she would have made had the member been
193 under the public employees retirement system during the period
194 of his or her membership in the state police death, disability and
195 retirement fund plus interest at a rate determined by the board.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

***§18-7A-17. Statement and computation of teachers' service; qualified military service.**

1 (a) Under rules adopted by the retirement board, each
2 teacher shall file a detailed statement of his or her length of
3 service as a teacher for which he or she claims credit. The
4 retirement board shall determine what part of a year is the
5 equivalent of a year of service. In computing the service,
6 however, it shall credit no period of more than a month's
7 duration during which a member was absent without pay, nor
8 shall it credit for more than one year of service performed in
9 any calendar year.

10 (b) For the purpose of this article, the retirement board shall
11 grant prior service credit to new entrants and other members of
12 the retirement system for service in any of the armed forces of
13 the United States in any period of national emergency within
14 which a federal Selective Service Act was in effect. For
15 purposes of this section, "armed forces" includes women's
16 army corps, women's appointed volunteers for emergency
17 service, army nurse corps, spars, women's reserve and other
18 similar units officially parts of the military service of the United
19 States. The military service is considered equivalent to public

***Clerk's Note:** This section was also amended by H. B. 2778 (Chapter 259), which passed prior to this act.

20 school teaching, and the salary equivalent for each year of that
21 service is the actual salary of the member as a teacher for his or
22 her first year of teaching after discharge from military service.
23 Prior service credit for military service shall not exceed ten
24 years for any one member, nor shall it exceed twenty-five
25 percent of total service at the time of retirement. Notwithstand-
26 ing the preceding provisions of this subsection, contributions,
27 benefits and service credit with respect to qualified military
28 service shall be provided in accordance with Section 414(u) of
29 the Internal Revenue Code. For purposes of this section,
30 "qualified military service" has the same meaning as in Section
31 414(u) of the Internal Revenue Code. The retirement board is
32 authorized to determine all questions and make all decisions
33 relating to this section and, pursuant to the authority granted to
34 the retirement board in section one, article ten-d, chapter five of
35 this code, may promulgate rules relating to contributions,
36 benefits and service credit to comply with Section 414(u) of the
37 Internal Revenue Code.

38 (c) For service as a teacher in the employment of the federal
39 government, or a state or territory of the United States, or a
40 governmental subdivision of that state or territory, the retire-
41 ment board shall grant credit to the member: *Provided*, That the
42 member shall pay to the system double the amount he or she
43 contributed during the first full year of current employment,
44 times the number of years for which credit is granted, plus
45 interest at a rate to be determined by the retirement board. The
46 interest shall be deposited in the reserve fund and service credit
47 granted at the time of retirement shall not exceed the lesser of
48 ten years or fifty percent of the member's total service as a
49 teacher in West Virginia. Any transfer of out-of-state service,
50 as provided in this article, shall not be used to establish
51 eligibility for a retirement allowance and the retirement board
52 shall grant credit for the transferred service as additional service
53 only: *Provided, however*, That a transfer of out-of-state service
54 is prohibited if the service is used to obtain a retirement benefit
55 from another retirement system: *Provided further*, That salaries

56 paid to members for service prior to entrance into the retirement
57 system shall not be used to compute the average final salary of
58 the member under the retirement system.

59 (d) Service credit for members or retired members shall not
60 be denied on the basis of minimum income rules promulgated
61 by the teachers retirement board: *Provided*, That the member or
62 retired member shall pay to the system the amount he or she
63 would have contributed during the year or years of public
64 school service for which credit was denied as a result of the
65 minimum income rules of the teachers retirement board.

66 (e) No members shall be considered absent from service
67 while serving as a member or employee of the Legislature of
68 the state of West Virginia during any duly constituted session
69 of that body or while serving as an elected member of a county
70 commission during any duly constituted session of that body.

71 (f) No member shall be considered absent from service as
72 a teacher while serving as an officer with a statewide profes-
73 sional teaching association, or who has served in that capacity,
74 and no retired teacher, who served in that capacity while a
75 member, shall be considered to have been absent from service
76 as a teacher by reason of that service: *Provided*, That the period
77 of service credit granted for that service shall not exceed ten
78 years: *Provided, however*, That a member or retired teacher
79 who is serving or has served as an officer of a statewide
80 professional teaching association shall make deposits to the
81 teachers retirement board, for the time of any absence, in an
82 amount double the amount which he or she would have
83 contributed in his or her regular assignment for a like period of
84 time.

85 (g) The teachers retirement board shall grant service credit
86 to any former or present member of the West Virginia public
87 employees retirement system who has been a contributing
88 member for more than three years, for service previously
89 credited by the public employees retirement system and: (1)

90 Shall require the transfer of the member's contributions to the
91 teachers retirement system; or (2) shall require a repayment of
92 the amount withdrawn any time prior to the member's retire-
93 ment: *Provided*, That there shall be added by the member to the
94 amounts transferred or repaid under this subsection an amount
95 which shall be sufficient to equal the contributions he or she
96 would have made had the member been under the teachers
97 retirement system during the period of his or her membership
98 in the public employees retirement system plus interest at a rate
99 of six percent compounded annually from the date of with-
100 drawal to the date of payment. The interest paid shall be
101 deposited in the reserve fund.

102 (h) For service as a teacher in an elementary or secondary
103 parochial school, located within this state and fully accredited
104 by the West Virginia department of education, the retirement
105 board shall grant credit to the member: *Provided*, That the
106 member shall pay to the system double the amount contributed
107 during the first full year of current employment, times the
108 number of years for which credit is granted, plus interest at a
109 rate to be determined by the retirement board. The interest shall
110 be deposited in the reserve fund and service granted at the time
111 of retirement shall not exceed the lesser of ten years or fifty
112 percent of the member's total service as a teacher in the West
113 Virginia public school system. Any transfer of parochial school
114 service, as provided in this section, may not be used to establish
115 eligibility for a retirement allowance and the board shall grant
116 credit for the transfer as additional service only: *Provided*,
117 *however*, That a transfer of parochial school service is prohib-
118 ited if the service is used to obtain a retirement benefit from
119 another retirement system.

120 (i) Active members who previously worked in CETA
121 (Comprehensive Employment and Training Act) may receive
122 service credit for time served in that capacity: *Provided*, That
123 in order to receive service credit under the provisions of this
124 subsection the following conditions must be met: (1) The
125 member must have moved from temporary employment with

126 the participating employer to permanent full time employment
127 with the participating employer within one hundred twenty days
128 following the termination of the member's CETA employment;
129 (2) the board must receive evidence that establishes to a
130 reasonable degree of certainty as determined by the board that
131 the member previously worked in CETA; and (3) the member
132 shall pay to the board an amount equal to the employer and
133 employee contribution plus interest at the amount set by the
134 board for the amount of service credit sought pursuant to this
135 subsection: *Provided, however,* That the maximum service
136 credit that may be obtained under the provisions of this
137 subsection is two years: *Provided further,* That a member must
138 apply and pay for the service credit allowed under this subsec-
139 tion and provide all necessary documentation by the thirty-first
140 day of December, two thousand one.

141 (j) If a member is not eligible for prior service credit or
142 pension as provided in this article, then his or her prior service
143 shall not be considered a part of his or her total service.

144 (k) A member who withdrew from membership may regain
145 his or her former membership rights as specified in section
146 thirteen of this article only in case he or she has served two
147 years since his or her last withdrawal.

148 (l) Subject to the provisions of subsections (a) through (l),
149 inclusive, of this section, the board shall verify as soon as
150 practicable the statements of service submitted. The retirement
151 board shall issue prior service certificates to all persons eligible
152 for the certificates under the provisions of this article. The
153 certificates shall state the length of the prior service credit, but
154 in no case shall the prior service credit exceed forty years.

155 (m) Notwithstanding any provision of this article to the
156 contrary, when a member is or has been elected to serve as a
157 member of the Legislature, and the proper discharge of his or
158 her duties of public office require that member to be absent
159 from his or her teaching or administrative duties, the time

160 served in discharge of his or her duties of the legislative office
161 are credited as time served for purposes of computing service
162 credit: *Provided*, That the board may not require any additional
163 contributions from that member in order for the board to credit
164 him or her with the contributing service credit earned while
165 discharging official legislative duties: *Provided, however*, That
166 nothing herein may be construed to relieve the employer from
167 making the employer contribution at the member's regular
168 salary rate or rate of pay from that employer on the contributing
169 service credit earned while the member is discharging his or her
170 official legislative duties. These employer payments shall
171 commence as of the first day of June, two thousand: *Provided*
172 *further*, That any member to which the provisions of this
173 subsection apply may elect to pay to the board an amount equal
174 to what his or her contribution would have been for those
175 periods of time he or she was serving in the Legislature. The
176 periods of time upon which the member paid his or her contri-
177 bution shall then be included for purposes of determining his or
178 her final average salary as well as for determining years of
179 service: *And provided further*, That a member utilizing the
180 provisions of this subsection is not required to pay interest on
181 any contributions he or she may decide to make.

CHAPTER 251

(H. B. 2516 — By Delegates Michael, Yeager,
Manuel, Givens and H. White)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section fifteen-b, article ten, chapter five of the
code of West Virginia, one thousand nine hundred thirty-one, as

amended; and to amend and reenact section fifteen of said article, all relating generally to conferring on persons eligible for public employees retirement benefits credited service for time spent in the active service of the armed forces of the United States during a period of compulsory military service or a period of armed conflict; providing legislative intent; providing for limitation on years of credited service; providing requirements for eligibility for credited service; allowing suspension of employee's contributions to retirement system and accumulation of credit balance in deposit fund with interest during period of military service; prohibiting duplicate credit for service; specifying powers of board of trustees of retirement system; providing for legislative rules; providing definitions; and providing for compliance with federal law.

Be it enacted by the Legislature of West Virginia:

That section fifteen-b, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that section fifteen of said article be amended and reenacted, all to read as follows:

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-15. Military service credit; qualified military service.

1 (a)(1) The Legislature recognizes the men and women of
2 this state who have served in the armed forces of the United
3 States during times of war, conflict and danger. It is the intent
4 of this section to confer military service credit upon persons
5 who are eligible at any time for public employees retirement
6 benefits for any time served in active duty in the armed forces
7 of the United States when the duty was during any period of
8 compulsory military service or during a period of armed
9 conflict, as defined in this section.

10 (2) In addition to any benefit provided by federal law, any
11 member of the retirement system who has previously served in
12 or enters the active service of the armed forces of the United
13 States during any period of compulsory military service or
14 during a period of armed conflict shall receive credited service
15 for the time spent in the armed forces of the United States, not
16 to exceed five years if the member:

17 (A) Has been honorably discharged from the armed forces;
18 and

19 (B) Substantiates by appropriate documentation or evidence
20 his or her active military service and entry into military service
21 during any period of compulsory military service or during
22 periods of armed conflict.

23 (3) Any member of the retirement system who enters the
24 active service of the armed forces of the United States during
25 any period of compulsory military service or during a period of
26 armed conflict shall receive the credit provided by this section
27 regardless of whether he or she was a public employee at the
28 time of entering the military service.

29 (4) If a member of the public employees retirement system
30 enters the active service of the United States and serves during
31 any period of compulsory military service or during any period
32 of armed conflict, during the period of the armed service and
33 until the member's return to the employ of a participating
34 public employer, the member's contributions to the retirement
35 system is suspended and any credit balance remaining in the
36 member's deposit fund shall be accumulated at regular interest.

37 (5) No member may receive duplicate credit for service for
38 a period of compulsory military service which falls under a
39 period of armed conflict.

40 (6) In any case of doubt as to the period of service to be
41 credited a member under the provisions of this section, the
42 board of trustees have final power to determine the period.

43 (7) The board is empowered to consider a petition by any
44 member whose tour of duty, in a territory that would reasonably
45 be considered hostile and dangerous, was extended beyond the
46 period in which an armed conflict was officially recognized, if
47 that tour of duty commenced during a period of armed conflict,
48 and the member was assigned to duty stations within the hostile
49 territory throughout the period for which service credit is being
50 sought. The board has the authority to evaluate the facts and
51 circumstances peculiar to the petition, and rule on whether
52 granting service credit for the extended tour of duty is consis-
53 tent with the objectives of this article. In that determination, the
54 board is empowered to grant full credit for the period under
55 petition subject to the limitations otherwise applicable, or to
56 grant credit for any part of the period as the board considers
57 appropriate, or to deny credit altogether.

58 (8) The board of trustees may propose legislative rules for
59 promulgation in accordance with the provisions of article three,
60 chapter twenty-nine-a of this code to administer the provisions
61 of this section.

62 (b) For purposes of this section, the following definitions
63 apply:

64 (1) "Period of armed conflict" means the Spanish-American
65 War, the Mexican border period, World War I, World War II,
66 the Korean conflict, the Vietnam era, the Persian Gulf War and
67 any other period of armed conflict by the United States,
68 including, but not limited to, those periods sanctioned by a
69 declaration of war by the United States Congress or by execu-
70 tive or other order of the president.

71 (2) “Spanish-American War” means the period beginning
72 on the twenty-first day of April, one thousand eight hundred
73 ninety-eight, and ending on the fourth day of July, one thousand
74 nine hundred two, and includes the Philippine Insurrection, the
75 Boxer Rebellion, and in the case of a veteran who served with
76 the United States military forces engaged in hostilities in the
77 Moro Province, means the period beginning on the twenty-first
78 day of April, one thousand eight hundred ninety-eight, and
79 ending on the fifteenth day of July, one thousand nine hundred
80 three.

81 (3) “The Mexican border period” means the period begin-
82 ning on the ninth day of May, one thousand nine hundred
83 sixteen, and ending on the fifth day of April, one thousand nine
84 hundred seventeen, in the case of a veteran who during the
85 period served in Mexico, on its borders or in the waters adjacent
86 to it.

87 (4) “World War I” means the period beginning on the sixth
88 day of April, one thousand nine hundred seventeen, and ending
89 on the eleventh day of November, one thousand nine hundred
90 eighteen, and in the case of a veteran who served with the
91 United States military forces in Russia, means the period
92 beginning on the sixth day of April, one thousand nine hundred
93 seventeen, and ending on the first day of April, one thousand
94 nine hundred twenty.

95 (5) “World War II” means the period beginning on the
96 seventh day of December, one thousand nine hundred forty-one,
97 and ending on the thirty-first day of December, one thousand
98 nine hundred forty-six.

99 (6) “Korean conflict” means the period beginning on the
100 twenty-seventh day of June, one thousand nine hundred fifty,
101 and ending on the thirty-first day of January, one thousand nine
102 hundred fifty-five.

103 (7) “The Vietnam era” means the period beginning on the
104 twenty-eighth day of February, one thousand nine hundred
105 sixty-one, and ending on the seventh day of May, one thousand
106 nine hundred seventy-five, in the case of a veteran who served
107 in the Republic of Vietnam during that period; and the fifth day
108 of August, one thousand nine hundred sixty-four, and ending on
109 the seventh day of May, one thousand nine hundred seventy-
110 five, in all other cases.

111 (8) “Persian Gulf War” means the period beginning on the
112 second day of August, one thousand nine hundred ninety, and
113 ending on the eleventh day of April, one thousand nine hundred
114 ninety-one.

115 (c) Notwithstanding the preceding provisions of this
116 section, contributions, benefits and service credit with respect
117 to qualified military service shall be provided in accordance
118 with Section 414(u) of the Internal Revenue Code. For purposes
119 of this section, “qualified military service” has the same
120 meaning as in Section 414(u) of the Internal Revenue Code.
121 The retirement board is authorized to determine all questions
122 and make all decisions relating to this section and, pursuant to
123 the authority granted to the retirement board in section one,
124 article ten-d of this chapter, may promulgate rules relating to
125 contributions, benefits and service credit to comply with
126 Section 414(u) of the Internal Revenue Code.

CHAPTER 252

(H. B. 2607 — By Delegates Staton, Varner and Pino)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-two-c, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public employees retirement; deleting certain restrictions on persons who exercised early retirement options and setting forth an effective date.

Be it enacted by the Legislature of West Virginia:

That section twenty-two-c, 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.

§5-10-22c. Temporary early retirement incentives program; legislative declaration and finding of compelling state interest and public purpose; specifying eligible and ineligible members for incentives program; options, conditions, and exceptions; certain positions abolished; special rule of eighty; effective, termination, and notice dates.

1 The Legislature hereby finds and declares that a compelling
2 state interest exists in providing a temporary early retirement
3 incentives program for encouraging the early, voluntary
4 retirement of those public employees who were current, active
5 contributing members of this retirement system on the first day
6 of April, one thousand nine hundred eighty-eight, in the
7 reduction of the number of such employees and in reduction of
8 governmental costs therefor; that such program constitutes a
9 public purpose; and that the special classifications and differen-
10 tiations provided in respect of such program are reasonable and
11 equitable ones for the accomplishment of such purpose and
12 program as enacted in Enrolled Committee Substitute for H. B.
13 No. 4672, regular session, one thousand nine hundred
14 eighty-eight, and as clarified and supplemented herein, retroac-
15 tive to such beginning date, aforesaid. The Legislature further

16 finds that maintaining an actuarially sound retirement fund is a
17 necessity and that the reemployment of persons who retire
18 under this section in any manner, including reemployment on
19 a contract basis, is contrary to the intent of the early retirement
20 program and severely threatens the fiscal integrity of the
21 retirement fund.

22 (a) For the purposes of this section: (1) "Contract" means
23 any personal service agreement, not involving the sale of
24 commodities, that cannot be performed within sixty days or that
25 exceeds two thousand five hundred dollars in any twelve-month
26 period. The term "contract" does not include any agreement
27 obtained by a retirant through a bidding process and which is
28 for the furnishing of any commodity to a government agency
29 and that term does not include any person who retired under
30 this section who works as a contract employee for the Legisla-
31 ture when such employment commences after the thirty-first
32 day of December, one thousand nine hundred ninety-nine; (2)
33 "governmental entity" means the state of West Virginia; a
34 constitutional branch or office of the state government, or any
35 subdivision thereof; a county, city or town in the state; a county
36 board of education; a separate corporation or instrumentality
37 established pursuant to a state statute; any other entity currently
38 permitted to participate in any state public retirement system or
39 the public employees insurance agency; or any officer or
40 official of any entity listed above who is acting in his or her
41 official capacity; (3) "part-time elected or appointed office"
42 means any elected or appointed office that pays annual compen-
43 sation of less than two thousand five hundred dollars or requires
44 less than sixty days of service in any twelve-month period; (4)
45 "substitute teacher" means a teacher, public school librarian,
46 registered professional nurse employed by the county board of
47 education or any other person employed for counseling or
48 instructional purposes in a public school in this state who is
49 temporarily fulfilling the duties of an existing real person

50 employed in a specific position who is temporarily absent from
51 that specified position.

52 (b) Beginning on the first day of April, one thousand nine
53 hundred eighty-eight, and continuing through the thirty-first day
54 of December, one thousand nine hundred eighty-eight (or as
55 extended by eligibility qualification requirement, as hereinafter
56 specified), eligible members, being those active, contributing
57 members actually and currently employed on such beginning
58 date, retiring pursuant to this section, and from any state,
59 county or municipal position, covered under the two divisions
60 of this retirement system (the state division and the public
61 employer, nonstate division) including those so employed on
62 said beginning date and leaving the system during the incentive
63 period and who are eligible for taking deferred retirement (but
64 not disability retirees) may elect to participate in this incentive
65 program and may elect any one of the three following incentive
66 options:

67 (1) Retirement incentive option one:

68 For the purpose of computing the member's annuity, the
69 normal final average salary shall be computed and one-eighth
70 thereof shall be added thereto in arriving at the true final
71 average salary for use in actual computation of retirement
72 benefit.

73 (2) Retirement incentive option two:

74 A member may elect a lump sum payment, in addition to
75 his regular retirement annuity, equal to ten percent of his final
76 average salary not to exceed five thousand dollars, and in the
77 case of a deferred retirement electing this option, such lump
78 sum payment shall be receivable and deferred to the time of
79 receipt of such deferred retirement annuity.

80 (3) Retirement incentive option three:

81 A person shall be credited with an additional two years of
82 contributing service and an additional two years of age. The
83 years credited under this option shall in no way add to a
84 member's final average salary factor of computation.

85 Active, contributing members who desire to retire under
86 this section but who are unable to retire by the thirty-first day
87 of December, one thousand nine hundred eighty-eight, and
88 make use of the incentive retirement program because an
89 element of eligibility for retirement, such as age or other
90 element, will not be met until a date after the thirty-first day of
91 December, one thousand nine hundred eighty-eight, and before
92 the first day of July, one thousand nine hundred eighty-nine,
93 shall be permitted to postpone actual retirement until the date
94 of fulfilling such element of eligibility and shall retire on such
95 date, before the temporary retirement incentive program ends
96 on the thirtieth day of June, one thousand nine hundred
97 eighty-nine, with proper credit to be granted for such extended
98 period: *Provided*, That they shall have made application for
99 retirement, including choice of their respective option, and
100 given notice to their respective employer by the thirty-first day
101 of December, one thousand nine hundred eighty-eight, although
102 postponing actual retirement, as aforesaid.

103 (c) Any member participating in this retirement incentive
104 program is not eligible to accept further employment or accept,
105 directly or indirectly, work on a contract basis from any
106 governmental entity: *Provided*, That nothing in this section
107 shall affect any contract entered into prior to the effective date
108 of this section: *Provided, however*, That the executive director
109 may approve, upon written request and for good cause shown,
110 an exception allowing a retirant to perform work on a contract
111 basis. The executive director shall report all approved excep-
112 tions to the board of trustees: *Provided further*, That a person
113 may retire under this section and thereafter serve in an elective
114 office: *And provided further*, That he shall not receive an

115 incentive option under this section during the term of service in
116 said office, but shall receive his or her annuity calculated on
117 regular basis, as if originally taken not under this section but on
118 such regular basis. At the end of such term and cessation of
119 service in such office during which the member shall rejoin and
120 reenter the retirement system and pay contributions therefor,
121 such regular annuity shall be recalculated and an increased
122 annuity due to such additional employment shall be granted and
123 computed on regular basis and in similar manner as under
124 section forty-eight of this article. In respect of an appointive
125 office, as distinguished from an elective office, any person
126 retiring under this section and thereafter serving in such
127 appointive office shall not receive an incentive option under
128 this section during the term of service in said office, but the
129 same shall be suspended during such period: *And provided*
130 *further*, That at the end of such term and cessation of service in
131 such appointive office the incentive option provided for under
132 this section shall be resumed: *And provided further*, That any
133 person elected or appointed to office by the state or any of its
134 political subdivisions who waives whatever salary, wage or per
135 diem compensation he may be entitled to by virtue of service in
136 such office and who does not receive any income therefrom
137 except such reimbursement of out-of-pocket costs and expenses
138 as may be permitted by the statutes governing such office shall
139 continue to receive an incentive option under this section. Such
140 service shall not be counted as contributed or credited service
141 for purposes of computing retirement benefits.

142 If such elected or appointed office is a part-time elected or
143 appointed office, a person electing retirement under this section
144 may serve in such elected or appointed office without a loss of
145 the benefits provided under this section.

146 Prior to the initiation or renewal of any contract entered
147 into pursuant to the provisions of this section or the acceptance
148 of any elective or appointive office by a person who has elected

149 to retire under the early retirement provisions of this article,
150 such person shall complete a disclosure and waiver statement
151 executed under oath and acknowledged by a notary public. The
152 board shall promulgate rules, pursuant to chapter twenty-nine-a,
153 of this code regarding the form and contents of the disclosure
154 and waiver statement. The disclosure and waiver statement
155 shall be forwarded to the appropriate state public retirement
156 system administrator who shall take action to ensure that the
157 early retirement incentive benefits are reduced in accordance
158 with the provisions of this section. The administrator shall then
159 certify such action in writing to the appropriate governmental
160 entity.

161 In any event, an eligible member may retire under this
162 section and thereafter continue to receive his incentive annuity
163 and be employed as a substitute teacher or as adjunct faculty.

164 Any such incentive retirants, under this section, may not
165 thereafter receive such annuity and enter or reenter any
166 governmental retirement system established or authorized to be
167 established by the state, notwithstanding any provision of the
168 code to the contrary, unless required by constitutional provision
169 or as hereby specifically permitted to those retiring and
170 thereafter serving in elective office, as aforesaid.

171 The additional annuity allowed for temporary early
172 retirement under these options, in respect of state division
173 retirants of this system, is intended to be paid from the retire-
174 ment incentive account hereby created as a special account in
175 the state treasury and from the funds therein established with
176 moneys required to be transferred by heads of spending units
177 from the unused portion of salary and fringe benefits in their
178 budgets accruing in respect of such positions vacated and
179 subsequently canceled under this temporary early retirement
180 program. Salary and fringe benefit moneys actually saved in a
181 particular fiscal year shall constitute the fund source for

182 payment of such additional annuity, the funds of the retirement
183 system to be used for payment of the base annuity under the
184 early retirement incentive program: *Provided*, That such
185 additional annuity shall be paid from the unused portion of both
186 salary and fringe benefits and with any remainder of any fringe
187 benefit moneys, as such, to remain with the spending unit and
188 any remainder of salary, as such, to be directed as additional
189 funding to the teachers retirement system and as a part of the
190 assets thereof. No such additional annuity shall be disallowed
191 even though initial receipts may not be sufficient, with funds of
192 the system to be applied for such purpose, as for the base
193 annuity. With respect to public employer division retirants
194 (nonstate division retirants of the system), such incentive
195 annuity shall be paid from the nonstate division funds of the
196 system.

197 (d) The executive secretary of the retirement system shall
198 provide forms for applicants. Such forms shall include a
199 detailed description of the incentive plan options.

200 The executive secretary of the retirement system shall file
201 a report to the Legislature no later than the fifteenth day of
202 February, one thousand nine hundred eighty-nine, and quarterly
203 thereafter, detailing the number of retirees who have elected to
204 accept early retirement incentive options, the dollar cost to date
205 by option selected, and the projected annual cost through the
206 year two thousand.

207 (e) Within every spending unit, department, board, corpora-
208 tion, commission, or any other agency or entity wherein two or
209 multiples of two members elect to retire either under the
210 temporary early retirement incentives set forth above, or under
211 regular, voluntary retirement, and countable on an agency-wide
212 or entity-wide basis, no more than one of such vacated positions
213 may be filled, with the second position being abolished upon
214 the effective day of the member's retirement. The vacant

215 position abolishment requirement shall not apply to elective
216 positions or appointed public officers whose positions are
217 established by state constitutional or statutory provision. The
218 retirant's employing entity shall decide as to which of the
219 vacated positions made available through special early retire-
220 ment or through regular, voluntary retirement are to be abol-
221 ished and the head of such spending unit shall immediately
222 notify the state auditor, the legislative auditor, and the commis-
223 sioner of the department of finance and administration of the
224 decisions and shall then apply and/or transfer the remaining
225 salary and fringe benefits as aforesaid: *Provided*, That this
226 vacant position abolishment provision shall not apply to any
227 county or municipal position except those under the authority
228 of a county board of education, nor to any position or positions,
229 whether designated by spending unit, department, agency,
230 commission, entity or otherwise, which the governor in respect
231 of the executive branch, or the chief justice of the supreme
232 court of appeals in respect of the judicial branch, or the
233 president of the Senate or speaker of the House of Delegates, in
234 respect of the legislative branch, may exempt or amend, under
235 such abolishment provision, upon his respective recommenda-
236 tion that such exemption or amendment is necessary to provide
237 for continuity of governmental operation or to preserve the
238 health, welfare or safety of the people of West Virginia, and
239 with the prior concurrence of the joint committee on govern-
240 ment and finance in such recommendation, after the chairmen
241 thereof shall cause such committee to meet.

242 (f) *Special rule of eighty.* — Any active, contributing
243 member of the retirement system as of the first day of April,
244 one thousand nine hundred eighty-eight, who selects one of the
245 incentive options in this section, may retire under the special
246 early retirement provisions with full pension rights, without
247 reduction of benefits if the sum of such member's age plus
248 years of contributing service equals or exceeds eighty: *Pro-*
249 *vided*, That such person has at least twenty years of contributing

250 service; up to two years of which may be military service, or
251 prior service, or any combination thereof not exceeding an
252 aggregate of two years.

253 (g) *Termination of temporary retirement incentives*
254 *program.* — The right to elect, choose, select or use any of the
255 options, special rule of eighty, or other benefits set forth in this
256 section shall terminate on the thirtieth day of June, one thou-
257 sand nine hundred eighty-nine.

258 (h) The board shall promulgate rules and regulations in
259 accordance with the provisions of article three, chapter twenty-
260 nine of this code regarding the calculation of the amount of
261 incentive option that may be forfeited pursuant to the provisions
262 of subsection (b) of this section.

CHAPTER 253

(S. B. 552 — By Senators Plymale, Tomblin, Mr. President, Craigo, Jackson, Prezioso, Bailey, Wooton, Bowman, Kessler, Anderson, Hunter, Edgell, Helmick, Minard, Sharpe, Ross, Mitchell, Love, Rowe, Caldwell, Oliverio, McKenzie, Redd and Burnette)

[Passed April 13, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-two-g, relating to the public employees retirement system; providing for a one-time supplement to the retirement benefit of certain annuitants; and specifying eligibility criteria and setting amounts therefor.

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-g, to read as follows:

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-22g. One-time supplement for certain annuitants effective July 1, 2001.

1 (a) A one-time supplement to retirement benefits shall be
2 provided to retirees of this system who have: (i) Reached the
3 specified age threshold; and (ii) have been in retirement status
4 for the specified number of years, as follows:

5 (1) For retirees who, as of the first day of July, two
6 thousand one, are at least sixty-five years of age and who have
7 been an annuitant for at least five consecutive years, this
8 one-time supplement shall equal five percent of his or her
9 annuity benefit as of the effective date of this section;

10 (2) For retirees who, as of the first day of July, two
11 thousand one, are at least seventy years of age and who have
12 been an annuitant for at least five consecutive years, this one-
13 time supplement shall equal ten percent of his or her annuity
14 benefit as of the effective date of this section; and

15 (3) For any person who, as of the first day of July, two
16 thousand one, is at least sixty-five years of age and who retired
17 under the early retirement incentive provided in section
18 twenty-two-c of this article, this one-time supplement shall
19 equal three percent of his or her annuity benefit as of the
20 effective date of this section and subdivisions (1) and (2) of this
21 subsection do not apply.

22 (b) The one-time supplement provided for in this section
23 applies only to members who have retired prior to or as of the
24 effective date of this section or, if applicable, to beneficiaries
25 receiving benefits under the retirement system prior to or as of
26 the effective date of this section: *Provided*, That the supplement
27 provided herein is subject to any applicable limitations thereon
28 under Section 415 of the Internal Revenue Code of 1986, as
29 amended.

CHAPTER 254

(S. B. 559 — By Senators Minear, Unger and Plymale)

[Passed April 14, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section twenty-seven, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to preretirement death benefits under the West Virginia public employees retirement system; clarifying that a lump sum refund amount may be paid as a preretirement death benefit in lieu of an annuity; clarifying that no annuity benefit is due if the member has fewer than ten years of service; and providing that a married member who has at least ten years of service is allowed to name a beneficiary other than a spouse to receive preretirement death benefits if a valid waiver is presented to the retirement board.

Be it enacted by the Legislature of West Virginia:

That section twenty-seven, 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.

§5-10-27. Preretirement death annuities.

1 (a) In the event any member who has ten or more years of
2 credited service or any former member with ten or more years
3 of credited service and who is entitled to a deferred annuity,
4 pursuant to section twenty-one of this article, may at any time
5 prior to the effective date of his or her retirement, by written
6 declaration duly executed and filed with the board of trustees,
7 in the same manner as if he or she were then retiring from the
8 employ of a participating public employer, elect option A
9 provided for in section twenty-four of this article and nominate
10 a beneficiary whom the board finds to have had an insurable
11 interest in the life of the member. Prior to the effective date of
12 his or her retirement, a member may revoke his or her election
13 of option A and nomination of beneficiary and he or she may
14 again prior to his or her retirement elect option A and nominate
15 a beneficiary as provided in this subsection. Upon the death of
16 a member who has an option A election in force, his or her
17 beneficiary, if living, shall immediately receive an annuity
18 computed in the same manner in all respects as if the same
19 member had retired the day preceding the date of his or her
20 death, notwithstanding that he or she might not have attained
21 age sixty years, and elected the said option A. If at the time of
22 his or her retirement a member has an option A election in
23 force, his or her election of option A and nomination of
24 beneficiary shall thereafter continue in force. As an alternative
25 to annuity option A, a member or former member may elect to
26 have the preretirement death benefit paid as a return of accumu-
27 lated contributions in a lump sum amount to any beneficiary or
28 beneficiaries he or she chooses.

29 (b) In the event any member who has ten or more years of
30 credited service, or any former member with ten or more years
31 of credited service and who is entitled to a deferred annuity,
32 pursuant to section twenty-one of this article: (1) Dies; and (2)
33 leaves a surviving spouse, the surviving spouse shall immedi-
34 ately receive an annuity computed in the same manner in all
35 respects as if the said member had: (1) Retired the day preced-
36 ing the date of his or her death, notwithstanding that he or she
37 might not have attained age sixty or sixty-two years, as the case
38 may be; (2) elected option A provided for in section twenty-
39 four of this article; and (3) nominated his or her surviving
40 spouse as beneficiary. However, the surviving spouse shall have
41 the right to waive the annuity provided for in this section:
42 *Provided*, That he or she executes a valid and notarized waiver
43 on a form provided by the retirement board and that the
44 member or former member attests to the waiver. If the waiver
45 is presented to and accepted by the retirement board, the
46 member or former member shall nominate a beneficiary who
47 has an insurable interest in the member's or former member's
48 life. As an alternative to annuity option A, the member or
49 former member may elect to have the preretirement death
50 benefit paid as a return of accumulated contributions in a lump
51 sum amount to any beneficiary or beneficiaries he or she
52 chooses in the event a waiver, as provided for in this section,
53 has been presented to and accepted by the retirement board.

54 (c) In the event any member who has ten or more years of
55 credited service or any former member with ten or more years
56 of credited service and who is entitled to a deferred annuity,
57 pursuant to section twenty-one of this article: (1) Dies without
58 leaving surviving him or her a spouse; but (2) leaves surviving
59 him or her an infant child or children; and (3) does not have a
60 beneficiary nominated as provided in subsection (a) of this
61 section, the infant child or children shall be entitled to an
62 annuity to be calculated as follows: The annuity reserve shall be

63 calculated as though the member had retired as of the date of
64 his or her decease and elected a straight life annuity and the
65 amount of the annuity reserve shall be paid in equal monthly
66 installments to said the member's infant child or children until
67 the child or children attain age twenty-one or sooner marry or
68 become emancipated; however, in no event shall any child or
69 children receive more than two hundred fifty dollars per month
70 each. The annuity payments shall be computed as of the date of
71 the death of the member and the amount of the annuity shall
72 remain constant during the period of payment. The annual
73 amount of the annuities payable by this section shall not exceed
74 sixty percent of the deceased member's final average salary.

75 (d) In the event any member or former member does not
76 have ten or more years of credited service, no preretirement
77 death annuity may be authorized, owed or awarded under this
78 section.

CHAPTER 255

**(S. B. 712 — By Senators Plymale, Fanning,
Prezioso, Edgell, McCabe and Sprouse)**

[Passed April 14, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-eight, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to West Virginia public employees retirement system; members' reemployment after retirement; and retirement options for holders of elected public office.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-48. Reemployment after retirement; options for holder of elected public office.

1 The Legislature finds that a compelling state interest exists
2 in maintaining an actuarially sound retirement system and that
3 this interest necessitates that certain limitations be placed upon
4 an individual's ability to retire from the system and to then later
5 return to state employment as an employee with a participating
6 public employer while contemporaneously drawing an annuity
7 from the system. The Legislature hereby further finds and
8 declares that the interests of the public are served when persons
9 having retired from public employment are permitted, within
10 certain limitations, to render post-retirement employment in
11 positions of public service, either in elected or appointed
12 capacities.

13 (a) For the purposes of this section: (1) "Regularly em-
14 ployed on a full-time basis" means employment of an individ-
15 ual by a participating public employer, in a position other than
16 as an elected or appointed public official, which normally
17 requires twelve months per year service and/or requires at least
18 one thousand forty hours of service per year in that position;
19 and (2) "temporary full-time employment or temporary part-
20 time employment" means employment of an individual on a
21 temporary or provisional basis by a participating public
22 employer, other than as an elected or appointed public official,
23 in a position which does not otherwise render the individual as
24 regularly employed.

25 (b) In the event a retirant becomes regularly employed on
26 a full-time basis by a participating public employer, payment of
27 his or her annuity shall be suspended during the period of his or
28 her reemployment and he or she shall become a contributing
29 member to the retirement system. If his or her reemployment is
30 for a period of one year or longer, his or her annuity shall be
31 recalculated and he or she shall be granted an increased annuity
32 due to such additional employment, said annuity to be com-
33 puted according to section twenty-two of this article. A retirant
34 may accept temporary full-time or temporary part-time
35 employment from a participating employer without suspending
36 his or her retirement annuity so long as he or she does not
37 receive annual compensation in excess of ten thousand dollars.

38 (c) In the event a member retires and is then subsequently
39 elected to a public office or is subsequently appointed to hold
40 an elected public office, he or she has the option, notwithstand-
41 ing subsection (b) of this section, to either:

42 (1) Continue to receive payment of his or her annuity while
43 holding such public office, in addition to the salary he or she
44 may be entitled to as such office holder; or

45 (2) Suspend the payment of his or her annuity and become
46 a contributing member of the retirement system as provided in
47 subsection (b) of this section. Notwithstanding the provisions
48 of this subsection, a member who is participating in the system
49 as an elected public official may not retire from his or her
50 elected position and commence to receive an annuity from the
51 system and then be reappointed to the same position unless and
52 until a continuous six-month period has passed since his or her
53 retirement from the position.

54 (d) A member who is participating in the system simulta-
55 neously as both a regular, full-time employee of a participating
56 public employer and as an elected or appointed member of the

57 legislative body of the state or any political subdivision may,
58 upon meeting the age and service requirements of this article,
59 elect to retire from his or her regular full-time state employment
60 and may commence to receive an annuity from the system
61 without terminating his or her position as a member of the
62 legislative body of the state or political subdivision: *Provided,*
63 That the retired member shall not, during the term of his or her
64 retirement and continued service as a member of the legislative
65 body of a political subdivision, be eligible to continue his or her
66 participation as a contributing member of the system and shall
67 not continue to accrue any additional service credit or benefits
68 in the system related to the continued service.

69 (e) Notwithstanding the provisions of section twenty-seven-
70 b of this article, any publicly elected member of the legislative
71 body of any political subdivision or of the state Legislature, the
72 clerk of the House of Delegates and the clerk of the Senate may
73 elect to commence receiving in-service retirement distributions
74 from this system upon attaining the age of seventy and one-half
75 years: *Provided,* That the member is eligible to retire under the
76 provisions of section twenty or section twenty-one of this
77 article: *Provided, however,* That the member elects to stop
78 actively contributing to the system while receiving such in-
79 service distributions.

CHAPTER 256

(Com. Sub. for H. B. 2777 — By Delegates Campbell,
J. Smith, Hubbard and Harrison)

[Passed April 12, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and twenty-four, article fourteen-d, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to technical revisions and to clarify retirement membership of a retired deputy sheriff who is later elected sheriff.

Be it enacted by the Legislature of West Virginia:

That sections two and twenty-four, article fourteen-d, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-2. Definitions.

§7-14D-24. Service as sheriff.

§7-14D-2. Definitions.

1 As used in this article, unless a federal law or regulation or
2 the context clearly requires a different meaning:

3 (a) "Accrued benefit" means on behalf of any member two
4 and one-quarter percent of the member's final average salary
5 multiplied by the member's years of credited service. A
6 member's accrued benefit may not exceed the limits of Section
7 415 of the Internal Revenue Code and is subject to the provi-
8 sions of section nine-a of this article.

9 (b) "Accumulated contributions" means the sum of all
10 amounts deducted from the compensation of a member, or paid
11 on his or her behalf pursuant to article ten-c, chapter five of this
12 code, either pursuant to section seven of this article or section
13 twenty-nine, article ten, chapter five of this code as a result of
14 covered employment together with regular interest on the
15 deducted amounts.

16 (c) “Active military duty” means full-time active duty with
17 any branch of the armed forces of the United States, including
18 service with the national guard or reserve military forces when
19 the member has been called to active full-time duty and has
20 received no compensation during the period of that duty from
21 any board or employer other than the armed forces.

22 (d) “Actuarial equivalent” means a benefit of equal value
23 computed upon the basis of the mortality table and interest rates
24 as set and adopted by the retirement board in accordance with
25 the provisions of this article.

26 (e) “Annual compensation” means the wages paid to the
27 member during covered employment within the meaning of
28 Section 3401(a) of the Internal Revenue Code, but determined
29 without regard to any rules that limit the remuneration included
30 in wages based upon the nature or location of employment or
31 services performed during the plan year plus amounts excluded
32 under Section 414(h)(2) of the Internal Revenue Code and less
33 reimbursements or other expense allowances, cash or noncash
34 fringe benefits or both, deferred compensation and welfare
35 benefits. Annual compensation for determining benefits during
36 any determination period may not exceed one hundred fifty
37 thousand dollars as adjusted for cost of living in accordance
38 with Section 401(a)(17)(B) of the Internal Revenue Code.

39 (f) “Annual leave service” means accrued annual leave.

40 (g) “Annuity starting date” means the first day of the first
41 period for which an amount is received as an annuity by reason
42 of retirement. For purposes of this subsection, if retirement
43 income payments commence after the normal retirement age,
44 “retirement” means the later of the last day the member worked
45 in covered employment and the normal retirement age.

46 (h) “Base salary” means a member’s cash compensation
47 exclusive of overtime from covered employment during the last

48 twelve months of employment. Until a member has worked
49 twelve months, annualized base salary is used as base salary.

50 (i) "Board" means the consolidated public retirement board
51 created pursuant to article ten-d, chapter five of this code.

52 (j) "County commission" has the meaning ascribed to it in
53 section one, article one, chapter seven of this code.

54 (k) "Covered employment" means either: (1) Employment
55 as a deputy sheriff and the active performance of the duties
56 required of a deputy sheriff; or (2) the period of time which
57 active duties are not performed but disability benefits are
58 received under section fourteen or fifteen of this article; or (3)
59 concurrent employment by a deputy sheriff in a job or jobs in
60 addition to his or her employment as a deputy sheriff where
61 such secondary employment requires the deputy sheriff to be a
62 member of another retirement system which is administered by
63 the consolidated public retirement board pursuant to article ten-
64 d of chapter five of this code: *Provided*, That the deputy sheriff
65 contribute to the fund created in section six of this article the
66 amount specified as the deputy sheriff's contribution in section
67 seven of this article.

68 (l) "Credited service" means the sum of a member's years
69 of service, active military duty, disability service and annual
70 leave service.

71 (m) "Deputy sheriff" means an individual employed as a
72 county law-enforcement deputy sheriff in this state and as
73 defined by section two, article fourteen, chapter seven of this
74 code.

75 (n) "Dependent child" means either:

76 (1) An unmarried person under age eighteen who is:

77 (A) A natural child of the member;

78 (B) A legally adopted child of the member;

79 (C) A child who at the time of the member's death was
80 living with the member while the member was an adopting
81 parent during any period of probation; or

82 (D) A stepchild of the member residing in the member's
83 household at the time of the member's death; or

84 (2) Any unmarried child under age twenty-three:

85 (A) Who is enrolled as a full-time student in an accredited
86 college or university;

87 (B) Who was claimed as a dependent by the member for
88 federal income tax purposes at the time of member's death; and

89 (C) Whose relationship with the member is described in
90 subparagraph (A), (B) or (C), paragraph (1) of this subdivision.

91 (o) "Dependent parent" means the father or mother of the
92 member who was claimed as a dependent by the member for
93 federal income tax purposes at the time of the member's death.

94 (p) "Disability service" means service received by a
95 member, expressed in whole years, fractions thereof or both,
96 equal to one half of the whole years, fractions thereof, or both,
97 during which time a member receives disability benefits under
98 section fourteen or fifteen of this article.

99 (q) "Early retirement age" means age forty or over and
100 completion of twenty years of service.

101 (r) "Effective date" means the first day of July, one
102 thousand nine hundred ninety-eight.

103 (s) "Final average salary" means the average of the highest
104 annual compensation received for covered employment by the
105 member during any five consecutive plan years within the
106 member's last ten years of service. If the member did not have
107 annual compensation for the five full plan years preceding the
108 member's attainment of normal retirement age and during that
109 period the member received disability benefits under section
110 fourteen or fifteen of this article then "final average salary"
111 means the average of the monthly salary determined paid to the
112 member during that period as determined under section
113 seventeen of this article multiplied by twelve.

114 (t) "Fund" means the West Virginia deputy sheriff retire-
115 ment fund created pursuant to section six of this article.

116 (u) "Hour of service" means:

117 (1) Each hour for which a member is paid or entitled to
118 payment for covered employment during which time active
119 duties are performed. These hours shall be credited to the
120 member for the plan year in which the duties are performed;
121 and

122 (2) Each hour for which a member is paid or entitled to
123 payment for covered employment during a plan year but where
124 no duties are performed due to vacation, holiday, illness,
125 incapacity including disability, layoff, jury duty, military duty,
126 leave of absence, or any combination thereof, and without
127 regard to whether the employment relationship has terminated.
128 Hours under this paragraph shall be calculated and credited
129 pursuant to West Virginia division of labor rules. A member
130 will not be credited with any hours of service for any period of
131 time he or she is receiving benefits under section fourteen or
132 fifteen of this article; and

133 (3) Each hour for which back pay is either awarded or
134 agreed to be paid by the employing county commission,

135 irrespective of mitigation of damages. The same hours of
136 service shall not be credited both under paragraph (1) or (2) of
137 this subdivision and under this paragraph. Hours under this
138 paragraph shall be credited to the member for the plan year or
139 years to which the award or agreement pertains, rather than the
140 plan year in which the award, agreement or payment is made.

141 (v) "Member" means a person first hired as a deputy sheriff
142 after the effective date of this article, as defined in subsection
143 (r) of this section, or a deputy sheriff first hired prior to the
144 effective date and who elects to become a member pursuant to
145 section five or section seventeen of this article. A member shall
146 remain a member until the benefits to which he or she is
147 entitled under this article are paid or forfeited.

148 (w) "Monthly salary" means the portion of a member's
149 annual compensation which is paid to him or her per month.

150 (x) "Normal form" means a monthly annuity which is one
151 twelfth of the amount of the member's accrued benefit which
152 is payable for the member's life. If the member dies before the
153 sum of the payments he or she receives equals his or her
154 accumulated contributions on the annuity starting date, the
155 named beneficiary shall receive in one lump sum the difference
156 between the accumulated contributions at the annuity starting
157 date and the total of the retirement income payments made to
158 the member.

159 (y) "Normal retirement age" means the first to occur of the
160 following:

161 (1) Attainment of age fifty years and the completion of
162 twenty or more years of service;

163 (2) While still in covered employment, attainment of at
164 least age fifty years and when the sum of current age plus years
165 of service equals or exceeds seventy years;

166 (3) While still in covered employment, attainment of at
167 least age sixty years and completion of five years of service; or

168 (4) Attainment of age sixty-two years and completion of
169 five or more years of service.

170 (z) "Partially disabled" means a member's inability to
171 engage in the duties of deputy sheriff by reason of any medi-
172 cally determinable physical or mental impairment that can be
173 expected to result in death or that has lasted or can be expected
174 to last for a continuous period of not less than twelve months.
175 A member may be determined partially disabled for the
176 purposes of this article and maintain the ability to engage in
177 other gainful employment which exists within the state but
178 which ability would not enable him or her to earn an amount at
179 least equal to two thirds of the average annual compensation
180 earned by all active members of this plan during the plan year
181 ending as of the most recent thirtieth day of June, as of which
182 plan data has been assembled and used for the actuarial
183 valuation of the plan.

184 (aa) "Public employees retirement system" means the West
185 Virginia public employee's retirement system created by article
186 ten, chapter five of this code.

187 (bb) "Plan" means the West Virginia deputy sheriff death,
188 disability and retirement plan established by this article.

189 (cc) "Plan year" means the twelve-month period commenc-
190 ing on the first day of July of any designated year and ending
191 the following thirtieth day of June.

192 (dd) "Regular interest" means the rate or rates of interest
193 per annum, compounded annually, as the board adopts in
194 accordance with the provisions of this article.

195 (ee) "Retirement income payments" means the annual
196 retirement income payments payable under the plan.

197 (ff) "Spouse" means the person to whom the member is
198 legally married on the annuity starting date.

199 (gg) "Surviving spouse" means the person to whom the
200 member was legally married at the time of the member's death
201 and who survived the member.

202 (hh) "Totally disabled" means a member's inability to
203 engage in substantial gainful activity by reason of any medi-
204 cally determined physical or mental impairment that can be
205 expected to result in death or that has lasted or can be expected
206 to last for a continuous period of not less than twelve months.

207 For purposes of this subdivision:

208 (1) A member is totally disabled only if his or her physical
209 or mental impairment or impairments is so severe that he or she
210 is not only unable to perform his or her previous work as a
211 deputy sheriff but also cannot, considering his or her age,
212 education and work experience, engage in any other kind of
213 substantial gainful employment which exists in the state
214 regardless of whether: (A) The work exists in the immediate
215 area in which the member lives; (B) a specific job vacancy
216 exists; or (C) the member would be hired if he or she applied
217 for work.

218 (2) "Physical or mental impairment" is an impairment that
219 results from an anatomical, physiological or psychological
220 abnormality that is demonstrated by medically accepted clinical
221 and laboratory diagnostic techniques.

222 A member's receipt of social security disability benefits
223 creates a rebuttable presumption that the member is totally

224 disabled for purposes of this plan. Substantial gainful employ-
225 ment rebuts the presumption of total disability.

226 (ii) "Year of service." A member shall, except in his or her
227 first and last years of covered employment, be credited with
228 year of service credit based upon the hours of service performed
229 as covered employment and credited to the member during the
230 plan year based upon the following schedule:

231	Hours of Service	Year of Service Credited
232	Less than 500	0
233	500 to 999	1/3
234	1,000 to 1,499	2/3
235	1,500 or more	1

236 During a member's first and last years of covered employ-
237 ment, the member shall be credited with one twelfth of a year
238 of service for each month during the plan year in which the
239 member is credited with an hour of service. A member is not
240 entitled to credit for years of service for any time period during
241 which he or she received disability payments under section
242 fourteen or fifteen of this article. Except as specifically
243 excluded, years of service include covered employment prior to
244 the effective date.

245 Years of service which are credited to a member prior to his
246 or her receipt of accumulated contributions upon termination of
247 employment pursuant to section thirteen of this article or
248 section thirty, article ten, chapter five of this code, shall be
249 disregarded for all purposes under this plan unless the member
250 repays the accumulated contributions with interest pursuant to
251 section twelve of this article or had prior to the effective date
252 made the repayment pursuant to section eighteen, article ten,
253 chapter five of this code.

254 (jj) "Required beginning date" means the first day of April
255 of the calendar year following the later of: (i) The calendar year
256 in which the member attains age seventy and one-half; or (ii)
257 the calendar year in which he or she retires or otherwise
258 separates from covered employment.

§7-14D-24. Service as sheriff.

1 (a) Any active member who after the effective date of this
2 article is elected sheriff of a county in West Virginia may elect
3 to continue as a member in this plan by paying the amounts
4 required by section seven of this article. Upon the election,
5 service as a sheriff shall be treated as covered employment and
6 the sheriff is not entitled to any credit for that service under any
7 other retirement system of the state.

8 (b) Any member retired as a deputy sheriff under this plan
9 who, after the effective date of this article, is elected or
10 appointed sheriff of a county in West Virginia, may elect to
11 suspend the payment of his or her annuity from this system and
12 again become a contributing member of this plan by paying the
13 amounts required by section seven of this article. Upon such
14 election, service as a sheriff shall be treated as covered employ-
15 ment, and the sheriff is not entitled to any credit for that period
16 of elected service under any other retirement system of the
17 state. At the end of his or her term as sheriff, the member
18 making such election shall have his or her annuity recalculated,
19 and shall be granted an adjustment to his or her previous
20 annuity to include the period of elected service.

21 (c) Any person, who before the effective date of this article
22 was elected sheriff of a county in West Virginia, and who,
23 immediately prior to being so elected sheriff, was a deputy
24 sheriff with at least twenty years of credited service under the
25 public employees retirement system, with at least sixteen of
26 those twenty years having been earned as a deputy sheriff, may

27 elect to become a member of this plan by paying the amounts
28 required by section seven of this article. Upon such election,
29 service shall be transferred from the public employees retire-
30 ment system pursuant to section eight of this article: *Provided,*
31 That any service as a sheriff shall be treated as covered
32 employment under this article and the sheriff is not entitled to
33 any credit for that service as a sheriff or the prior service as a
34 deputy sheriff under any other retirement system of the state.
35 Persons making the election provided for in this subsection
36 shall do so within ten days of taking office as sheriff or within
37 ten days of the effective date of this provision.

CHAPTER 257

**(H. B. 2775 — By Delegates Campbell, J. Smith,
Keener, Browning, Hubbard, Hall and Harrison)**

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine-b, article fourteen-d, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twenty-eight-b, article seven-a, chapter eighteen of said code; to amend and reenact section twelve-a, article seven-b of said chapter; and to amend and reenact section twelve-b, article nine, chapter fifty-one of said code, all relating to technical revisions to correct the effective dates specified in said provisions.

Be it enacted by the Legislature of West Virginia:

That section nine-b, article fourteen-d, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section twenty-eight-b, article seven-a, chapter eighteen of said code be amended and reenacted; that section twelve-a, article seven-b of said chapter be amended and reenacted; and that section twelve-b, article nine, chapter fifty-one of said code be amended and reenacted, all to read as follows:

Chapter

7. County Commissions and Officers.

18. Education.

51. Courts and Their Officers.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-9b. Federal law minimum required distributions.

1 The requirements of this section apply to any distribution
2 of a member's or beneficiary's interest and take precedence
3 over any inconsistent provisions of this plan. This section
4 applies to plan years beginning after the thirty-first day of
5 December, one thousand nine hundred eighty-six. Notwith-
6 standing anything in the plan to the contrary, the payment of
7 benefits under this article shall be determined and made in
8 accordance with Section 401(a)(9) of the Internal Revenue
9 Code and the regulations thereunder. For this purpose, the
10 following provisions apply:

11 (a) The payment of benefits under the plan to any member
12 shall be distributed to him or her not later than the required
13 beginning date, or be distributed to him or her commencing not
14 later than the required beginning date, in accordance with
15 regulations prescribed under Section 401(a)(9) of the Internal
16 Revenue Code, over the life of the member or over the lives of
17 the member and his or her beneficiary or over a period not

18 extending beyond the life expectancy of the member and his or
19 her beneficiary.

20 (b) If a member dies after distribution to him or her has
21 commenced pursuant to this section but before his or her entire
22 interest in the plan has been distributed, then the remaining
23 portion of that interest shall be distributed at least as rapidly as
24 under the method of distribution being used at the date of his or
25 her death.

26 (c) If a member dies before distribution to him or her has
27 commenced, then his or her entire interest in the plan shall be
28 distributed by the thirty-first day of December of the calendar
29 year containing the fifth anniversary of the member's death,
30 except as follows:

31 (1) If a member's interest is payable to a beneficiary,
32 distributions may be made over the life of that beneficiary or
33 over a period certain not greater than the life expectancy of the
34 beneficiary, commencing on or before the thirty-first of
35 December of the calendar year immediately following the
36 calendar year in which the member died; or

37 (2) If the member's beneficiary is the surviving spouse, the
38 date distributions are required to begin shall be no later than the
39 later of:

40 (A) The thirty-first day of December of the calendar year in
41 which the member would have attained age seventy and one-
42 half; or

43 (B) The earlier of: (i) The thirty-first day of December of
44 the calendar year following the calendar year in which the
45 member died; or (ii) the thirty-first day of December of the
46 calendar year following the calendar year in which the spouse
47 died.

CHAPTER 18. EDUCATION.**Article****7A. State Teachers Retirement System.****7B. Teachers' Defined Contribution Retirement System.****ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.****§18-7A-28b. Federal law minimum required distributions.**

1 The requirements of this section apply to any distribution
2 of a member's or beneficiary's interest and take precedence
3 over any inconsistent provisions of this retirement system. This
4 section applies to plan years beginning after the thirty-first day
5 of December, one thousand nine hundred eighty-six. Notwith-
6 standing anything in the retirement system to the contrary, the
7 payment of benefits under this article shall be determined and
8 made in accordance with Section 401(a)(9) of the Internal
9 Revenue Code and the regulations thereunder. For this purpose,
10 the following provisions apply:

11 (a) The payment of benefits under the retirement system to
12 any member shall be distributed to him or her not later than the
13 required beginning date, or be distributed to him or her com-
14 mencing not later than the required beginning date, in accor-
15 dance with regulations prescribed under Section 401(a)(9) of
16 the Internal Revenue Code, over the life of the member or over
17 the lives of the member and his or her beneficiary or over a
18 period not extending beyond the life expectancy of the member
19 and his or her beneficiary.

20 (b) If a member dies after distribution to him or her has
21 commenced pursuant to this section but before his or her entire
22 interest in the retirement system has been distributed, then the
23 remaining portion of that interest shall be distributed at least as

24 rapidly as under the method of distribution being used at the
25 date of his or her death.

26 (c) If a member dies before distribution to him or her has
27 commenced, then his or her entire interest in the retirement
28 system shall be distributed by the thirty-first day of December
29 of the calendar year containing the fifth anniversary of the
30 member's death, except as follows:

31 (1) If a member's interest is payable to a beneficiary,
32 distributions may be made over the life or over a period certain
33 not greater than the life expectancy of the beneficiary com-
34 mencing on or before the thirty-first of December of the
35 calendar year immediately following the calendar year in which
36 the member died; or

37 (2) If the member's beneficiary is the surviving spouse, the
38 date distributions are required to begin shall not be earlier than
39 the later of:

40 (A) The thirty-first day of December of the calendar year in
41 which the member would have attained age seventy and one-
42 half; or

43 (B) The earlier of: (i) The thirty-first day of December of
44 the calendar year following the calendar year in which the
45 member died; or (ii) the thirty-first day of December of the
46 calendar year following the calendar year in which the spouse
47 died.

ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-12a. Federal minimum required distributions.

1 The requirements of this section apply to any distribution
2 of a member's or beneficiary's interest and take precedence

3 over any inconsistent provisions of this defined contribution
4 system. This section applies to plan years beginning after the
5 thirty-first day of December, one thousand nine hundred eighty-
6 six. Notwithstanding anything in this system to the contrary, the
7 payment of benefits under this article shall be determined and
8 made in accordance with Section 401(a)(9) of the Internal
9 Revenue Code and the regulations thereunder. For this purpose,
10 the following provisions apply:

11 (a) The payment of benefits under the defined contribution
12 system to any member shall be distributed to him or her not
13 later than the required beginning date, or be distributed to him
14 or her commencing not later than the required beginning date,
15 in accordance with regulations prescribed under Section
16 401(a)(9) of the Internal Revenue Code, over the life of the
17 member or over the lives of the member and his or her benefi-
18 ciary or over a period not extending beyond the life expectancy
19 of the member and his or her beneficiary.

20 (b) If a member dies after distribution to him or her has
21 commenced pursuant to this section but before his or her entire
22 interest in the system has been distributed, then the remaining
23 portion of that interest shall be distributed at least as rapidly as
24 under the method of distribution being used at the date of his or
25 her death.

26 (c) If a member dies before distribution to him or her has
27 commenced, then his or her entire interest in the system shall be
28 distributed by the thirty-first day of December of the calendar
29 year containing the fifth anniversary of the member's death,
30 except as follows:

31 (1) If a member's interest is payable to a beneficiary,
32 distributions may be made over the life of that beneficiary or
33 over a period certain not greater than the life expectancy of the
34 beneficiary commencing on or before the thirty-first day of

35 December of the calendar year immediately following the
36 calendar year in which the participant died; or

37 (2) If the member's beneficiary is the surviving spouse, the
38 date distributions are required to begin shall be no later than the
39 later of:

40 (A) The thirty-first day of December of the calendar year in
41 which the member would have attained age seventy and one-
42 half; or

43 (B) The earlier of (i) The thirty-first day of December of
44 the calendar year in which the member died; or (ii) the thirty-
45 first day of December of the calendar year following the
46 calendar year in which the spouse died.

47 (d) For purposes of this section, any amount paid to a child
48 of a member will be treated as if it had been paid to the
49 surviving spouse of the member if such remaining amount
50 becomes payable to the surviving spouse when the child reaches
51 the age of majority.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.

§51-9-12b. Federal minimum required distributions.

1 The requirements of this section apply to any distribution
2 of a member's or beneficiaries interest and take precedence
3 over any inconsistent provisions of this retirement system. This
4 section applies to plan years beginning after the thirty-first day
5 of December, one thousand nine hundred eighty-six. Notwith-
6 standing anything in the retirement system to the contrary, the
7 payment of benefits under this article shall be determined and
8 made in accordance with Section 401(a)(9) of the Internal

9 Revenue Code and the regulations thereunder. For this purpose,
10 the following provisions apply:

11 (a) The payment of benefits under the retirement system to
12 any member shall be distributed to him or her not later than the
13 required beginning date, or be distributed to him or her com-
14 mencing not later than the required beginning date, in accor-
15 dance with treasury regulations prescribed under Section
16 401(a)(9) of the Internal Revenue Code, over the life of the
17 member or over the lives of the member and his or her benefi-
18 ciary or over a period not extending beyond the life expectancy
19 of the member and his or her beneficiary.

20 (b) If a member dies after distribution to him or her has
21 commenced pursuant to this section but before his or her entire
22 interest in the retirement system has been distributed, then the
23 remaining portion of that interest shall be distributed at least as
24 rapidly as under the method of distribution being used at the
25 date of his or her death.

26 (c) If a member dies before distribution to him or her has
27 commenced, then his or her entire interest in the retirement
28 system shall be distributed by the thirty-first day of December
29 of the calendar year containing the fifth anniversary of the
30 member's death, except as follows:

31 (1) If a member's interest is payable to a beneficiary,
32 distributions may be made over the life of that beneficiary or
33 over a period certain not greater than the life expectancy of the
34 beneficiary commencing on or before the thirty-first of Decem-
35 ber of the calendar year immediately following the calendar
36 year in which the member died; or

37 (2) If the member's beneficiary is the surviving spouse, the
38 date distributions are required to begin shall be no later than the
39 later of:

40 (A) The thirty-first day of December of the calendar year in
41 which the member would have attained age seventy and one-
42 half; or

43 (B) The earlier of: (i) The thirty-first day of December of
44 the calendar year following the calendar year in which the
45 member died; or (ii) the thirty-first day of December of the
46 calendar year following the calendar year in which the spouse
47 died.

CHAPTER 258

(H. B. 2776 — By Delegates Campbell, J. Smith,
Keener, Browning, Hubbard, Hall and Harrison)

[Passed April 12, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-three, article fourteen-
d, chapter seven of the code of West Virginia, one thousand nine
hundred thirty-one, as amended; and to amend and reenact section
thirty-four, article seven-a, chapter eighteen of said code, all
relating to plan loan programs for the deputy sheriff's retirement
system and the teachers retirement system; incorporating federal
tax law provisions; and authorizing the consolidated public
retirement board to issue loans and administer the loan programs
in compliance with federal law, including the adoption of policies
and procedures and taking any action necessary or appropriate to
comply with federal tax law or otherwise required by the Internal
Revenue Service.

Be it enacted by the Legislature of West Virginia:

That section twenty-three, article fourteen-d, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section thirty-four, article seven-a, chapter eighteen of said code, be amended and reenacted, all to read as follows:

Chapter

7. County Commissions and Officers.

18. Education.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14D. WEST VIRGINIA DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-23. Loans to Members.

1 (a) A member who is not yet receiving disability or
2 retirement income benefits from the plan may borrow from the
3 plan no more than one time in any year an amount up to one
4 half of his or her accumulated contributions, but not less than
5 five hundred dollars nor more than eight thousand dollars:
6 *Provided*, That the maximum amount of any loan when added
7 to the outstanding balance of all other loans shall not exceed the
8 lesser of the following: (1) Fifty thousand dollars reduced by
9 the excess (if any) of the highest outstanding balance of loans
10 to the member during the one-year period ending on the day
11 before the date on which the loan is made, over the outstanding
12 balance of loans to the member on the day on which the loan is
13 made; or (2) fifty percent of his or her accumulated contribu-
14 tions. No loan may be made from the plan if the board deter-
15 mines that the loans constitute more than fifteen percent of the
16 amortized cost value of the assets of the plan as of the last day
17 of the preceding plan year. The board may discontinue the loans
18 any time it determines that cash flow problems might develop
19 as a result of the loans. Each loan shall be repaid through
20 monthly installments over periods of six through sixty months

21 and carry interest on the unpaid balance and an annual effective
22 interest rate that is two hundred basis points higher than the
23 most recent rate of interest used by the board for determining
24 actuarial contributions levels: *Provided, however,* That interest
25 charged shall be commercially reasonable in accordance with
26 the provisions of section 72(p)(2) of the Internal Revenue Code
27 and federal regulations issued thereunder. Monthly loan
28 payments shall be calculated to be as nearly equal as possible
29 with all but the final payment being an equal amount. An
30 eligible member may make additional loan payments or pay off
31 the entire loan balance at any time without incurring any
32 interest penalty. At the member's option, the monthly loan
33 payment may include a level premium sufficient to provide
34 declining term insurance with the plan as beneficiary to repay
35 the loan in full upon the member's death. If a member declines
36 the insurance and dies before the loan is repaid, the unpaid
37 balance of the loan shall be deducted from the lump sum
38 insurance benefits payable under section twenty-one of this
39 article.

40 (b) A member with an unpaid loan balance who wishes to
41 retire may have the loan repaid in full by accepting retirement
42 income payments reduced by deducting from the actuarial
43 reserve for the accrued benefit the amount of the unpaid balance
44 and then converting the remaining of the reserve to a monthly
45 pension payable in the form of the annuity desired by the
46 member.

47 (c) The entire unpaid balance of any loan, and interest due
48 thereon, shall at the option of the retirement board become due
49 and payable without further notice or demand upon the occur-
50 rence with respect to the borrowing member of any of the
51 following events of default: (1) Any payment of principal and
52 accrued interest on a loan remains unpaid after the same
53 become due and payable under the terms of the loan or after
54 such grace period as may be established in the discretion of the

55 retirement board; (2) the borrowing member attempts to make
56 an assignment for the benefit of creditors of his or her benefit
57 under the retirement system; or (3) any other event of default
58 set forth in rules promulgated by the board pursuant to the
59 authority granted in section one, article ten-d, chapter five of
60 this code: *Provided*, That any offset of such unpaid loan balance
61 shall be made only at such time as the member is entitled to
62 receive a distribution under the plan.

63 (d) Loans shall be evidenced by such form of obligations
64 and shall be made upon such additional terms as to default,
65 prepayment, security, and otherwise as the retirement board
66 may determine.

67 (e) Notwithstanding anything herein to the contrary, the
68 loan program authorized by this section shall comply with the
69 provisions of section 72(p)(2) and section 401 of the Internal
70 Revenue Code and the federal regulations issued thereunder.
71 The retirement board is authorized to: (a) Apply and construe
72 the provisions of this section and administer the plan loan
73 program in such a manner as to comply with the provisions of
74 sections 72(p)(2) and section 401 of the Internal Revenue Code;
75 (b) adopt plan loan policies or procedures consistent with these
76 federal law provisions; and (c) take such actions as it deems
77 necessary or appropriate to administer the plan loan program
78 created hereunder in accordance with these federal law provi-
79 sions. The retirement board is further authorized in connection
80 with the plan loan program to take any actions that may at any
81 time be required by the Internal Revenue Service regarding
82 compliance with the requirements of section 72(p)(2) or section
83 401 of the Internal Revenue Code, notwithstanding any
84 provision in this article to the contrary.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-34. Loans to members.

1 A member of the retirement system upon written applica-
2 tion may borrow from his or her individual account in the
3 teachers accumulation fund, subject to these restrictions:

4 (1) Loans shall be made in multiples of ten dollars, the
5 minimal loan being one hundred dollars and the maximum
6 being eight thousand dollars: *Provided*, That the maximum
7 amount of any loan when added to the outstanding balance of
8 all other loans shall not exceed the lesser of the following: (a)
9 Fifty thousand dollars reduced by the excess (if any) of the
10 highest outstanding balance of loans during the one-year period
11 ending on the day before the date on which the loan is made,
12 over the outstanding balance of loans to the member on the date
13 on which the loan is made; or (b) fifty percent of the member's
14 contributions to his or her individual account in the teachers
15 accumulations fund: *Provided, however*, That if the total
16 amount of loaned money outstanding exceeds forty million
17 dollars, the maximum shall not exceed three thousand dollars
18 until the retirement board determines that loans outstanding
19 have been reduced to an extent that additional loan amounts are
20 again authorized.

21 (2) Interest charged on the amount of the loan shall be six
22 percent per annum, or a higher rate as set by the retirement
23 board: *Provided*, That interest charged shall be commercially
24 reasonable in accordance with the provisions of section 72(p)(2)
25 of the Internal Revenue Code, and the federal regulations issued
26 thereunder. If repayable in installments, the interest shall not
27 exceed the annual rate so established upon the principal amount
28 of the loan, for the entire period of the loan, and such charge
29 shall be added to the principal amount of the loan. The minimal
30 interest charge shall be for six months.

31 (3) No member shall be eligible for more than one loan in
32 any one year.

33 (4) If a refund or benefit is payable to the borrower or his
34 or her beneficiary before he or she repays the loan with interest,
35 the balance due with interest to date shall be deducted from
36 such benefit or refund.

37 (5) From his or her monthly salary as a teacher the member
38 shall pay the loan and interest by deductions which will pay the
39 loan and interest in substantially level payments in not more
40 than sixty nor less than six months. Upon notice of loan granted
41 and payment due, the employer shall be responsible for making
42 such salary deductions and reporting them to the retirement
43 board. At the option of the retirement board, loan deductions
44 may be collected as prescribed herein for the collection of
45 members' contribution, or may be collected through issuance of
46 warrant by employer. If the borrower decides to make loan
47 payments while not paid for service as a teacher, the retirement
48 board must accept such payments.

49 (6) The entire unpaid balance of any loan, and interest due
50 thereon, shall, at the option of the retirement board, become due
51 and payable without further notice or demand upon the occur-
52 rence with respect to the borrowing member of any of the
53 following events of default: (A) Any payment of principal and
54 accrued interest on a loan remains unpaid after the same
55 becomes due and payable under the terms of the loan or after
56 such grace period as may be established in the discretion of the
57 retirement board; (B) the borrowing member attempts to make
58 an assignment for the benefit of creditors of his or her refund or
59 benefit under the retirement system; or (C) any other event of
60 default set forth in rules promulgated by the retirement board in
61 accordance with the authority granted pursuant to section one,
62 article ten-d, chapter five of this code: *Provided*, That any
63 refund or offset of an unpaid loan balance shall be made only at
64 the time the member is entitled to receive a distribution under
65 the retirement system.

66 (7) Loans shall be evidenced by such form of obligations
67 and shall be made upon such additional terms as to default,

68 prepayment, security, and otherwise as the retirement board
69 may determine.

70 (8) Notwithstanding anything herein to the contrary, the
71 loan program authorized by this section shall comply with the
72 provisions of section 72(p)(2) and section 401 of the Internal
73 Revenue Code, and the federal regulations issued thereunder,
74 and accordingly, the retirement board is authorized to: (a)
75 Apply and construe the provisions of this section and adminis-
76 ter the plan loan program in such a manner as to comply with
77 the provisions of section 72(p)(2) and section 401 of the
78 Internal Revenue Code and the federal regulations issued
79 thereunder; (b) adopt plan loan policies or procedures consistent
80 with these federal law provisions; and (c) take such actions as
81 it deems necessary or appropriate to administer the plan loan
82 program created hereunder in accordance with these federal law
83 provisions. The retirement board is further authorized in
84 connection with the plan loan program to take any actions that
85 may at any time be required by the Internal Revenue Service
86 regarding compliance with the requirements of section 72(p)(2)
87 or section 401 of the Internal Revenue Code, and the federal
88 regulations issued thereunder, notwithstanding any provision in
89 this article to the contrary.

CHAPTER 259

(H. B. 2778 — By Delegates Hubbard and Harrison)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections thirteen and seventeen, article seven-a, chapter eighteen of the code of West Virginia, one

thousand nine hundred thirty-one, as amended, relating to the teachers retirement system and providing that the interest rate charged members for repayment of service previously withdrawn shall be as set by the consolidated public retirement board in legislative rules.

Be it enacted by the Legislature of West Virginia:

That sections thirteen and seventeen, 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-13. Membership in retirement system; cessation of membership; reinstatement of withdrawn service.

§18-7A-17. Statement and computation of teachers' service; qualified military service.

§18-7A-13. Membership in retirement system; cessation of membership; reinstatement of withdrawn service.

1 The membership of the retirement system shall consist of
2 the following:

3 (a) New entrants, whose membership in the system is
4 compulsory upon employment as teachers and nonteachers.

5 (b) The membership of the retirement system shall not
6 include any person who is an active member of or who has been
7 retired by the West Virginia public employees retirement
8 system, the judge's retirement system, or the retirement system
9 of the department of public safety or the supplemental retire-
10 ment system as provided in section four-a, article twenty-three
11 of this chapter. The membership of any person in the retirement
12 system ceases:

13 (1) Upon the withdrawal of accumulated contributions after
14 the cessation of service; or (2) upon retirement; or (3) at death;
15 or (4) if service amounts to fewer than five years in any period
16 of ten consecutive years.

17 (c) Any former member of the retirement system who has
18 withdrawn accumulated contributions but subsequently reenters
19 the retirement system may repay to the retirement fund the
20 amount withdrawn, plus interest at a rate set by the board,
21 compounded annually from the date of withdrawal to the date
22 of repayment: *Provided*, That no repayment may be made until
23 the former member has completed two years of contributory
24 service after reentry; and the member shall be accorded all the
25 rights to prior service and experience as were held at the time
26 of withdrawal of the accumulated contributions: *Provided*,
27 *however*, That no withdrawn service may be reinstated that has
28 been transferred to another retirement system from which the
29 member is currently or will in the future draw benefits based on
30 the same service. The interest paid shall be deposited in the
31 reserve fund.

32 (d) No member is eligible for prior service credit unless he
33 or she is eligible for prior service pension, as prescribed by
34 section twenty-two of this article; however, a new entrant who
35 becomes a present teacher as provided in this subdivision shall
36 be considered eligible for prior service pension upon retirement.

37 (e) Any individual who is a leased employee is not eligible
38 to participate in the system. For purposes of this system, a
39 "leased employee" means any individual who performs services
40 as an independent contractor or pursuant to an agreement with
41 an employee leasing organization or other similar organization.
42 If a question arises regarding the status of an individual as a
43 leased employee, the board has final power to decide the
44 question.

***§18-7A-17. Statement and computation of teachers' service; qualified military service.**

1 (a) Under rules adopted by the retirement board, each
2 teacher shall file a detailed statement of his or her length of
3 service as a teacher for which he or she claims credit. The
4 retirement board shall determine what part of a year is the
5 equivalent of a year of service. In computing the service,
6 however, it shall credit no period of more than a month's
7 duration during which a member was absent without pay, nor
8 shall it credit for more than one year of service performed in
9 any calendar year.

10 (b) For the purpose of this article, the retirement board shall
11 grant prior service credit to new entrants and other members of
12 the retirement system for service in any of the armed forces of
13 the United States in any period of national emergency within
14 which a federal Selective Service Act was in effect. For
15 purposes of this section, "armed forces" includes women's
16 army corps, women's appointed volunteers for emergency
17 service, army nurse corps, spars, women's reserve and other
18 similar units officially parts of the military service of the United
19 States. The military service is considered equivalent to public
20 school teaching, and the salary equivalent for each year of that
21 service is the actual salary of the member as a teacher for his or
22 her first year of teaching after discharge from military service.
23 Prior service credit for military service shall not exceed ten
24 years for any one member, nor shall it exceed twenty-five
25 percent of total service at the time of retirement. Notwithstand-
26 ing the preceding provisions of this subsection, contributions,
27 benefits and service credit with respect to qualified military
28 service shall be provided in accordance with Section 414(u) of
29 the Internal Revenue Code. For purposes of this section,
30 "qualified military service" has the same meaning as in Section
31 414(u) of the Internal Revenue Code. The retirement board is

***Clerk's Note:** This section was also amended by H. B. 2080 (Chapter 250), which passed subsequent to this act.

32 authorized to determine all questions and make all decisions
33 relating to this section and, pursuant to the authority granted to
34 the retirement board in section one, article ten-d, chapter five of
35 this code, may promulgate rules relating to contributions,
36 benefits and service credit to comply with Section 414(u) of the
37 Internal Revenue Code.

38 (c) For service as a teacher in the employment of the federal
39 government, or a state or territory of the United States, or a
40 governmental subdivision of that state or territory, the retire-
41 ment board shall grant credit to the member: *Provided*, That the
42 member shall pay to the system double the amount he or she
43 contributed during the first full year of current employment,
44 times the number of years for which credit is granted, plus
45 interest at a rate to be determined by the retirement board. The
46 interest shall be deposited in the reserve fund and service credit
47 granted at the time of retirement shall not exceed the lesser of
48 ten years or fifty percent of the member's total service as a
49 teacher in West Virginia. Any transfer of out-of-state service,
50 as provided in this article, shall not be used to establish
51 eligibility for a retirement allowance and the retirement board
52 shall grant credit for the transferred service as additional service
53 only: *Provided, however*, That a transfer of out-of-state service
54 is prohibited if the service is used to obtain a retirement benefit
55 from another retirement system: *Provided further*, That salaries
56 paid to members for service prior to entrance into the retirement
57 system shall not be used to compute the average final salary of
58 the member under the retirement system.

59 (d) Service credit for members or retired members shall not
60 be denied on the basis of minimum income rules promulgated
61 by the teachers retirement board: *Provided*, That the member or
62 retired member shall pay to the system the amount he or she
63 would have contributed during the year or years of public
64 school service for which credit was denied as a result of the
65 minimum income rules of the teachers retirement board.

66 (e) No members shall be considered absent from service
67 while serving as a member or employee of the Legislature of
68 the state of West Virginia during any duly constituted session
69 of that body or while serving as an elected member of a county
70 commission during any duly constituted session of that body.

71 (f) No member shall be considered absent from service as
72 a teacher while serving as an officer with a statewide profes-
73 sional teaching association, or who has served in that capacity,
74 and no retired teacher, who served in that capacity while a
75 member, shall be considered to have been absent from service
76 as a teacher by reason of that service: *Provided*, That the period
77 of service credit granted for that service shall not exceed ten
78 years: *Provided, however*, That a member or retired teacher
79 who is serving or has served as an officer of a statewide
80 professional teaching association shall make deposits to the
81 teachers retirement board, for the time of any absence, in an
82 amount double the amount which he or she would have
83 contributed in his or her regular assignment for a like period of
84 time.

85 The teachers retirement board shall grant service credit to
86 any former or present member of the West Virginia public
87 employees retirement system who has been a contributing
88 member for more than three years, for service previously
89 credited by the public employees retirement system and: (1)
90 Shall require the transfer of the member's contributions to the
91 teachers retirement system; or (2) shall require a repayment of
92 the amount withdrawn any time prior to the member's retire-
93 ment: *Provided*, That there shall be added by the member to the
94 amounts transferred or repaid under this subsection an amount
95 which is sufficient to equal the contributions he or she would
96 have made had the member been under the teachers retirement
97 system during the period of his or her membership in the public
98 employees retirement system plus interest compounded

99 annually from the date of withdrawal to the date of payment at
100 a rate set by the board. The interest paid shall be deposited in
101 the reserve fund.

102 (g) For service as a teacher in an elementary or secondary
103 parochial school, located within this state and fully accredited
104 by the West Virginia department of education, the retirement
105 board shall grant credit to the member: *Provided*, That the
106 member shall pay to the system double the amount contributed
107 during the first full year of current employment, times the
108 number of years for which credit is granted, plus interest at a
109 rate to be determined by the retirement board. The interest shall
110 be deposited in the reserve fund and service granted at the time
111 of retirement shall not exceed the lesser of ten years or fifty
112 percent of the member's total service as a teacher in the West
113 Virginia public school system. Any transfer of parochial school
114 service, as provided in this section, may not be used to establish
115 eligibility for a retirement allowance and the board shall grant
116 credit for the transfer as additional service only: *Provided*,
117 *however*, That a transfer of parochial school service is prohib-
118 ited if the service is used to obtain a retirement benefit from
119 another retirement system.

120 (h) If a member is not eligible for prior service credit or
121 pension as provided in this article, then his or her prior service
122 shall not be considered a part of his or her total service.

123 (i) A member who withdrew from membership may regain
124 his or her former membership rights as specified in section
125 thirteen of this article only in case he or she has served two
126 years since his or her last withdrawal.

127 (j) Subject to the provisions of subsections (a) through (i),
128 inclusive, of this section, the board shall verify as soon as
129 practicable the statements of service submitted. The retirement

130 board shall issue prior service certificates to all persons eligible
131 for the certificates under the provisions of this article. The
132 certificates shall state the length of the prior service credit, but
133 in no case shall the prior service credit exceed forty years.

139 Notwithstanding any provision of this article to the
140 contrary, when a member is or has been elected to serve as a
141 member of the Legislature, and the proper discharge of his or
142 her duties of public office require that member to be absent
143 from his or her teaching or administrative duties, the time
144 served in discharge of his or her duties of the legislative office
145 are credited as time served for purposes of computing service
146 credit: *Provided*, That the board may not require any additional
147 contributions from that member in order for the board to credit
148 him or her with the contributing service credit earned while
149 discharging official legislative duties: *Provided, however*, That
150 nothing in this section may be construed to relieve the employer
151 from making the employer contribution at the member's regular
152 salary rate or rate of pay from that employer on the contributing
153 service credit earned while the member is discharging his or her
154 official legislative duties. These employer payments shall
155 commence as of the first day of June, two thousand: *Provided*
156 *further*, That any member to which the provisions of this
157 subsection apply may elect to pay to the board an amount equal
158 to what his or her contribution would have been for those
159 periods of time he or she was serving in the Legislature. The
160 periods of time upon which the member paid his or her contri-
161 bution shall then be included for purposes of determining his or
162 her final average salary as well as for determining years of
163 service: *And provided further*, That a member utilizing the
164 provisions of this subsection is not required to pay interest on
165 any contributions he or she may decide to make.

CHAPTER 260

**(S. B. 711— By Senators Plymale, Fanning, Jackson,
Prezioso, Edgell, McCabe and Sprouse)**

[Passed April 12, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article seven-b, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the rights of members who left employment under the teachers retirement system before the effective date of the teachers' defined contribution plan; and providing an option for such members to irrevocably reenter the teachers retirement system upon reemployment.

Be it enacted by the Legislature of West Virginia:

That section seven, article seven-b, 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 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-7. Participation in teachers' defined contribution retirement system; limiting participation in existing teachers retirement system.

- 1 (a) Beginning the first day of July, one thousand nine
- 2 hundred ninety-one, and except as provided for in this section,
- 3 the teachers' defined contribution system shall be the single
- 4 retirement program for all new employees whose employment

5 commences on or after that date. No additional new employees
6 except as may be provided for in this section may be admitted
7 to the existing teachers retirement system.

8 (b) Members of the existing teachers retirement system
9 whose employment continues beyond the first day of July, one
10 thousand nine hundred ninety-one, and those whose employ-
11 ment was terminated after the thirtieth day of June, one
12 thousand nine hundred ninety-one, under a reduction in force
13 are not affected by subsection (a) of this section and shall
14 continue to contribute to and participate in the existing teachers
15 retirement system without a change in plan provisions or
16 benefits.

17 (c) Any person who was previously a member of the
18 teachers retirement system and who left participating employ-
19 ment before the creation of the defined contribution system on
20 the first day of July, one thousand nine hundred ninety-one, and
21 who later returned to participating employment after the
22 effective date of this section has the right to elect to return to
23 the existing teachers retirement system or to elect to participate
24 in the defined contribution system. The election shall be made
25 at the time of his or her reemployment, is irrevocable and shall
26 be made upon forms approved by and filed with the West
27 Virginia consolidated public retirement board.

28 (d) Any person who was, prior to the first day of July, one
29 thousand nine hundred ninety-one, a member of the existing
30 teachers retirement system who left participating employment
31 before the creation of the teachers' defined contribution system
32 on the first day of July, one thousand nine hundred ninety-one,
33 and who later returned to participating employment after that
34 date and who was precluded from returning to the existing
35 teachers retirement system as a result of prior provisions of this
36 section, may elect, pursuant to the provisions of this section,
37 readmission to the existing teachers retirement system: *Pro-*

38 *vided*, That persons who are eligible to, and who make the
39 election to, terminate their participation in the defined contribu-
40 tion system and to return to participation in the existing
41 teachers retirement system as provided for in this section shall
42 make the election, on a form approved by and filed with the
43 West Virginia consolidated public retirement board on or before
44 the thirtieth day of June, two thousand two: *Provided, however*,
45 That as a condition of the right of readmission to the existing
46 teachers retirement system, persons making the election
47 provided for in this section whose defined contribution account
48 had not, prior to such election, been divided by a qualified
49 domestic relations order, shall pay an additional contribution to
50 the existing teachers retirement system equal to one and one-
51 half percent of his or her annual gross compensation earned for
52 each year during which he or she participated in the defined
53 contribution system and shall consent and agree to the transfer
54 of his or her total account balance in the defined contribution
55 system as of the most recent plan valuation immediately
56 preceding his or her transfer to the existing teachers retirement
57 system. For persons making the election provided for in this
58 section whose defined contribution account had, prior to such
59 election, previously been divided by a qualified domestic
60 relations order, the cost to such person to transfer to the existing
61 teachers retirement system shall be actuarially determined by
62 the consolidated public retirement board. Upon verification of
63 that person's eligibility to return to participation in the existing
64 teachers retirement system and the tender and transfer of funds
65 as provided for in this subsection, persons making this election
66 shall receive service credit for the time the member participated
67 in the defined contribution system as if his or her participation
68 had been in the existing teachers retirement system: *Provided*
69 *further*, That the right to terminate participation in the defined
70 contribution system and to resume participation in the existing
71 teachers retirement system as provided for in this section is
72 irrevocable and shall not apply to any person who, while

73 members of the teachers retirement system, voluntarily elected
74 to terminate his or her membership in the teachers retirement
75 system and to become a participant in the defined contribution
76 system pursuant to section eight of this article.

77 (e) Any employee whose employment with an employer
78 was suspended or terminated while he or she served as an
79 officer with a statewide professional teaching association is
80 eligible for readmission to the existing retirement system in
81 which he or she was a member.

82 (f) An employee whose employment with an employer or
83 an existing employer is suspended as a result of an approved
84 leave of absence, approved maternity or paternity break in
85 service or any other approved break in service authorized by the
86 board is eligible for readmission to the existing retirement
87 system in which he or she was a member.

88 (g) In all cases in which a question exists as to the right of
89 an employee to readmission to membership in the existing
90 teachers retirement system, the consolidated public retirement
91 board shall decide the question.

92 (h) Any individual who is not a “member” or “employee”
93 as defined by section two of this article and any individual who
94 is a leased employee is not eligible to participate in the teach-
95 ers’ defined contribution system. For purposes of this section,
96 a “leased” employee means any individual who performs
97 services as an independent contractor or pursuant to an agree-
98 ment with an employee leasing organization or other similar
99 organization. In all cases in which a question exists as to
100 whether an individual is eligible for membership in this system,
101 the consolidated public retirement board shall decide the
102 question.

CHAPTER 261

(Com. Sub. for H. B. 2592 — By Delegate Warner)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article seventeen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the issuance of continuous or multiple trip permits for the transport of oversize and overweight loads on state highways.

Be it enacted by the Legislature of West Virginia:

That section eleven, article seventeen, 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 17. SIZE, WEIGHT AND LOAD.

§17C-17-11. Permits for excess size and weight.

- 1 (a) The commissioner of highways may, in his or her
- 2 discretion, upon application in writing and good cause being
- 3 shown therefor issue a special permit in writing authorizing: (1)
- 4 The applicant, in crossing any highway of this state, to operate
- 5 or move a vehicle or combination of vehicles of a size or weight
- 6 or load exceeding the maximum specified in this chapter or
- 7 otherwise not in conformity with the provisions of this chapter,
- 8 whether the operation be continuous or not, provided the
- 9 applicant shall agree to compensate the commissioner of
- 10 highways for all damages or expenses incurred in connection

11 with the crossing; (2) the applicant to operate or move a vehicle
12 or combination of vehicles of a size or weight of vehicles or
13 nondivisible load exceeding the maximum specified in this
14 chapter or otherwise not in conformity with the provisions of
15 this chapter; and (3) the applicant to move or operate, for
16 limited or continuous operation, a vehicle hauling containerized
17 cargo in a sealed, seagoing container to or from a seaport or
18 inland waterway port that has or will be transported by marine
19 shipment where the vehicle is not, as a result of hauling the
20 container, in conformity with the provisions of this article
21 relating to weight limitations, upon the conditions that: (A) The
22 container be hauled only on the roadways and highways
23 designated by the commissioner of highways; (B) the contents
24 of the container are not changed from the time it is loaded by
25 the consignor or the consignor's agent to the time it is delivered
26 to the consignee or the consignee's agent; and (C) any addi-
27 tional conditions as the commissioner may impose to otherwise
28 ensure compliance with the provisions of this chapter.

29 (b)(1) The commissioner may issue a special permit to
30 operate or move a vehicle or combination of vehicles of a size
31 or weight of vehicles or nondivisible load exceeding the
32 maximum specified in this chapter or otherwise not in confor-
33 mity with the provisions of this chapter over routes designated
34 by the commissioner upon such terms and restrictions as the
35 commissioner may prescribe.

36 (2) For purposes of this section, nondivisible load means
37 any load exceeding applicable length or weight limits which, if
38 separated into smaller loads or vehicles, would: (A) compro-
39 mise the intended use of the vehicle, to the extent that the
40 separation would make it unable to perform the function for
41 which it was intended; (B) destroy the value of the load or
42 vehicle, to the extent that the separation would make it unusable
43 for its intended purpose; or (C) require more than eight
44 workhours to dismantle using appropriate equipment: *Provided,*

45 That the applicant for a nondivisible load permit has the burden
46 of proof as to the number of workhours required to dismantle
47 the load.

48 (c) The application for any permit other than a special
49 annual permit shall specifically describe the vehicle or vehicles
50 and load to be operated or moved along or across the highway
51 and the particular highway or crossing of the highway for which
52 permit to operate is requested, and whether the permit is
53 requested for a single trip or for a continuous operation.

54 (d) The commissioner of highways is authorized to issue or
55 withhold a permit at his or her discretion; or, if the permit is
56 issued, to limit the number of trips, or to establish seasonal or
57 other time limitations within which the vehicles described may
58 be operated on or across the highways indicated, or otherwise
59 to limit or prescribe conditions of operation of the vehicle or
60 vehicles, when necessary to assure against undue damage to the
61 road foundations, surface, or structures, and may require the
62 undertaking, bond or other security as may be considered
63 necessary to compensate for any injury to any roadway
64 structure and to specify the type, number and the location for
65 escort vehicles for any vehicle.

66 The commissioner may charge a fee not to exceed five
67 dollars for the issuance of a permit for a mobile home and a
68 reasonable fee for the issuance of a permit for any other vehicle
69 under the provisions of this section to pay the administrative
70 costs thereof.

71 (e) Every permit shall be carried in the vehicle or combina-
72 tion of vehicles to which it refers and shall be open to inspec-
73 tion by any police officer or authorized agent of the commis-
74 sioner of highways granting the permit, and no person shall
75 violate any of the terms or conditions of the special permit.

CHAPTER 262

**(Com. Sub. for H. B. 2912 — By Mr. Speaker,
Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed April, 14, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, four, five, six, seven and eight, article two-a, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section three, article sixteen, chapter five of said code; to amend and reenact section three, article one, chapter five-f of said code; to amend and reenact sections two and two-a, article seven, chapter six of said code; to amend and reenact section six, article four, chapter seven of said code; to amend and reenact section thirteen, article one, chapter ten of said code; to amend and reenact section one, article one, chapter eleven of said code; to amend and reenact section five, article twenty-nine-b, chapter sixteen of said code; to amend and reenact section four, article twenty-three, chapter nineteen of said code; to amend and reenact section five, article two, chapter twenty-one-a of said code; to amend and reenact section six, article one, chapter twenty-two of said code; to amend and reenact section three, article one, chapter twenty-two-a of said code; to amend and reenact section four, article one, chapter twenty-two-c of said code; to amend and reenact section three, article one, chapter twenty-four of said code; and to amend and reenact section four, article twenty, chapter thirty-one of said code, all relating to salary adjustments for certain public officials.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five, six, seven and eight, article two-a, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section three, article sixteen, chapter five of said code be amended and reenacted; that section three, article one, chapter five-f of said code be amended and reenacted; that sections two and two-a, article seven, chapter six of said code be amended and reenacted; that section six, article four, chapter seven of said code be amended and reenacted; that section thirteen, article one, chapter ten of said code be amended and reenacted; that section one, article one, chapter eleven of said code be amended and reenacted; that section five, article twenty-nine-b, chapter sixteen of said code be amended and reenacted; that section four, article twenty-three, chapter nineteen of said code be amended and reenacted; that section five, article two, chapter twenty-one-a of said code be amended and reenacted; that section six, article one, chapter twenty-two of said code be amended and reenacted; that section three, article one, chapter twenty-two-a of said code be amended and reenacted; that section four, article one, chapter twenty-two-c of said code be amended and reenacted; that section three, article one, chapter twenty-four of said code be amended and reenacted; and that section four, article twenty, chapter thirty-one of said code be amended and reenacted, all to read as follows:

Chapter

- 4. The Legislature.**
- 5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, etc.**
- 5F. Reorganization of the Executive Branch of State Government.**
- 6. General Provisions Respecting Officers.**
- 7. County Commissions and Officers.**
- 10. Public Libraries; Public Recreation; Athletic Establishments; Monuments and Memorials; Roster of Servicemen; Educational Broadcasting Authority.**

- 11. **Taxation.**
- 16. **Public Health.**
- 19. **Agriculture.**
- 21A. **Unemployment Compensation.**
- 22. **Environmental Resources.**
- 22A. **Miners' Health, Safety and Training.**
- 22C. **Environmental Resources; Boards, Authorities, Commissions and Compacts.**
- 24. **Public Service Commission.**
- 31. **Corporation.**

CHAPTER 4. THE LEGISLATURE.

ARTICLE 2A. COMPENSATION FOR AND EXPENSES OF MEMBERS OF THE LEGISLATURE.

PART II. COMPENSATION.

- §4-2A-2. Basic compensation for services; proration.
- §4-2A-3. Compensation for members of the Legislature during any extension of regular session or during extraordinary session.
- §4-2A-4. Additional compensation for president of Senate, speaker of House of Delegates, majority leaders, minority leaders, certain committee chairs and selected members of both houses.
- §4-2A-5. Interim compensation for members.
- §4-2A-6. Travel expenses.
- §4-2A-7. Reimbursement for expenses incurred during any session or interim assignment.
- §4-2A-8. Out-of-state expenses.

§4-2A-2. Basic compensation for services; proration.

- 1 (a) Each member of the Legislature shall receive as basic
- 2 compensation for his or her services the sum of fifteen thousand
- 3 dollars per calendar year. In addition to the basic compensation,
- 4 members shall receive the additional compensations as are
- 5 expressly provided for in sections three, four and five of this
- 6 article. Except for the increased basic compensation set forth in
- 7 this subsection, all other increased amounts or new amounts in

8 respect to the compensation or expenses of members of the
9 Legislature, set forth in the resolution of the citizens legislative
10 compensation commission, dated the eighth day of January, one
11 thousand nine hundred ninety-nine, and implemented in
12 sections two through eight of this article providing for new
13 amounts or amounts increased to new amounts greater than
14 those in force and effect on the first day of January, two
15 thousand, shall all become effective for calendar year two
16 thousand one, and each calendar year thereafter as prescribed in
17 this section.

18 (b) The basic compensation shall be payable twice a month
19 during each regular session of the Legislature, without regard
20 to any extension of the regular session. In the event of the
21 death, resignation or removal of a member of the Legislature
22 during a regular session of the Legislature and the appointment
23 and qualification of his or her successor during any regular
24 session, the basic compensation provided for in this section
25 shall be prorated between the original member and his or her
26 successor on the basis of the number of days served (including
27 Saturdays and Sundays) as a member of the Legislature by each
28 during the regular session of sixty calendar days.

29 (c) In the event of the death, resignation or removal of a
30 member of the Legislature and the appointment and qualifica-
31 tion of his or her successor subsequent to the regular session of
32 the Legislature held in the calendar year in which such succes-
33 sor was appointed and qualified, none of the basic compensa-
34 tion provided for in this section shall be paid to such successor.

**§4-2A-3. Compensation for members of the Legislature during
any extension of regular session or during extraordi-
nary session.**

1 Each member of the Legislature shall receive, in addition
2 to the basic compensation provided for in section two of this

3 article, additional compensation of one hundred fifty dollars per
4 day for each day of attendance in person upon any business of
5 the Senate or House of Delegates, as the case may be, on each
6 day upon which the Senate or House of Delegates is actually
7 called to order during each extension of regular session or
8 during extraordinary session of the Legislature. The additional
9 compensation shall be paid from time to time during any
10 extended session or extraordinary session, as prescribed by
11 rules established by the legislative auditor.

**§4-2A-4. Additional compensation for president of Senate,
speaker of House of Delegates, majority leaders,
minority leaders, certain committee chairs and
selected members of both houses.**

1 (a) In addition to the basic and additional compensation
2 provided for in sections two and three of this article, the
3 president of the Senate and the speaker of the House of
4 Delegates shall each receive additional compensation of:

5 (1) Fifty dollars per day for each day actually served during
6 any regular, extension of regular or extraordinary session as
7 presiding officer, including Saturdays and Sundays; and

8 (2) One hundred fifty dollars per day up to a maximum of
9 eighty days per calendar year for attending to legislative
10 business in their offices in the capitol building when the
11 Legislature is not in regular, extension of regular or extraordi-
12 nary session and interim committees are not meeting.

13 (b) In addition to the basic and additional compensation
14 provided for in sections two and three of this article, the
15 majority leaders and minority leaders of the Senate and of the
16 House of Delegates shall each receive additional compensation
17 of twenty-five dollars per day for each day actually served
18 during any regular, extension of regular or during extraordinary

19 session, including Saturdays and Sundays, as the selected
20 legislative leaders of their respective political parties.

21 (c) The presiding officer and majority and minority leader
22 compensation shall be paid from time to time during any such
23 session or interim period, as the case may be, as may be
24 prescribed by rules established by the legislative auditor.

25 (d) In addition to the basic and additional compensation
26 provided for in sections two and three of this article, the
27 chairpersons of the committees on finance and committees on
28 the judiciary of the respective houses and up to four additional
29 persons from each house, to be named by the presiding officer,
30 shall each receive an additional compensation of one hundred
31 fifty dollars per day up to a maximum of thirty days for
32 attending to legislative business in their offices in the capitol
33 building when the Legislature is not in regular, extended or
34 extraordinary session and interim committees are not meeting.

§4-2A-5. Interim compensation for members.

1 (a) In addition to the basic and any additional compensation
2 provided for in sections two, three and four of this article, each
3 member shall receive interim compensation of one hundred
4 fifty dollars per day for each day actually engaged in the
5 performance of interim duties as a member of any interim
6 committee between regular sessions of the Legislature:
7 *Provided*, That the total additional interim compensation
8 payable to any member and his or her replacement, if any, on a
9 committee or commission under the provisions of this subsection
10 shall not exceed the sum of four thousand five hundred
11 dollars per calendar year.

12 (b) In addition to the basic and any additional compensation
13 provided for in sections two, three and four of this article and
14 subsection (a) of this section, each member shall receive
15 interim compensation of one hundred fifty dollars per day for

16 each day actually engaged in the performance of legislative
17 duties at a meeting of any statutorily created legislative
18 committee which meets between regular sessions of the
19 Legislature and outside of regular interim meetings when
20 authorized by the committee cochairs and approved by the
21 president of the Senate and the speaker of the House of
22 Delegates, not to exceed fifteen days per calendar year.

PART III. EXPENSES.

§4-2A-6. Travel expenses.

1 (a) Each member of the Legislature is entitled to be
2 reimbursed, upon submission of an expense voucher, for
3 expenses incurred incident to travel in the performance of his
4 or her duties as a member of the Legislature or any committee
5 of the Legislature, whether the committee is operating under
6 general law or resolution, including, but not limited to, atten-
7 dance at party caucuses held in advance of the date of the
8 assembly of the Legislature in regular session in odd-numbered
9 years for the purpose of selecting candidates for officers of the
10 two houses, at a rate equal to that paid by the travel manage-
11 ment office of the department of administration for the most
12 direct usually traveled route, if travel is by private automobile,
13 or for actual transportation costs for direct route travel, if travel
14 is by public carrier, or for any combination of those means of
15 transportation actually used, plus the cost of necessary taxi or
16 limousine service, tolls and parking fees in connection with the
17 travel, but during any regular, extension of regular or extraordi-
18 nary session, travel expenses shall not be paid to any member
19 for more than one round trip to and from the seat of government
20 and to and from his or her place of residence for each week of
21 the session.

22 (b) In addition to the travel expense in subsection (a) of this
23 section, the president of the Senate and the speaker of the

24 House of Delegates are entitled to be reimbursed as provided in
25 subsection (a) of this section, upon submission of an expense
26 voucher, for expenses incurred incident to travel for up to a
27 maximum of eighty days per calendar year in connection with
28 their visits to the capitol building for business which is related
29 to their duties as presiding officers of the respective houses of
30 the Legislature, but which takes place when the Legislature is
31 not in regular, extension of regular or extraordinary session and
32 interim committees are not meeting.

33 (c) The rate paid for mileage pursuant to this section may
34 change from time to time in accordance with changes in the
35 reimbursement rates established by the travel management
36 office of the department of administration, or its successor
37 agency.

§4-2A-7. Reimbursement for expenses incurred during any session or interim assignment.

1 (a) Each member of the Legislature who does not commute
2 daily shall receive the sum of one hundred fifteen dollars per
3 day as per diem allowance in connection with any regular,
4 extended, extraordinary session, interim assignment or for any
5 member authorized by the presiding officer. Any member of the
6 Legislature who does commute daily shall receive the sum of
7 fifty-five dollars per day as the per diem allowance and, in
8 addition to the allowance, shall be reimbursed for overnight
9 commuting expenses at the mileage rate equal to the amount
10 paid by the travel management office of the department of
11 administration for the most direct usually traveled route, if
12 travel is by private automobile, or for actual transportation costs
13 for direct route travel, if travel is by public carrier, or for any
14 combination of the means of transportation actually used, plus
15 the costs of necessary taxi or limousine service, tolls and
16 parking fees in connection with the travel: *Provided*, That the
17 total of this per diem allowance plus travel expense for a daily

18 commuting member shall not exceed one hundred fifteen
19 dollars per day. The amount for mileage paid pursuant to this
20 subsection may change from time to time in accordance with
21 changes in the level of reimbursement by the travel manage-
22 ment office.

23 (b) The president of the Senate and the speaker of the
24 House of Delegates, the chairman of the house committee on
25 finance, the chairman of the senate committee on finance, the
26 chairman of the house committee on the judiciary, the chairman
27 of the senate committee on the judiciary, and up to four
28 additional persons from each house designated by the presiding
29 officer pursuant to section four of this article, shall be reim-
30 bursed for travel at the rate established in subsection (a) of this
31 section, and shall further receive the per diem allowance
32 established in the subsection in connection with their visits to
33 the capitol for business which is related to their duties as
34 officers at the times when the Legislature is not in regular,
35 extended or extraordinary session, and interim committees are
36 not meeting.

§4-2A-8. Out-of-state expenses.

1 In addition to reimbursement for travel expenses as
2 authorized in section six of this article, each member of the
3 Legislature traveling from West Virginia to an out-of-state
4 point or points and returning incident to the performance of his
5 or her duties as a member of the Legislature or any committee
6 of the Legislature, whether the committee is operating under
7 general law or resolution, where the travel has been duly
8 authorized, is entitled to be reimbursed, upon submission of an
9 expense voucher for the travel, for all reasonable and necessary
10 expenses actually incurred incident to the travel, but the total of
11 any and all reimbursed expenses, exclusive of reimbursement
12 for travel expenses, shall not under any circumstances exceed
13 the actual cost of housing at the least expensive available single

14 rate and meal and miscellaneous expenses of fifty-five dollars
15 per day. A receipt for the amount paid for housing and for
16 travel by any public transportation to and from West Virginia
17 shall be submitted with the expense voucher, but a receipt is not
18 required to be submitted with any expense voucher for meal and
19 miscellaneous expenses.

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF
THE GOVERNOR, SECRETARY OF STATE AND
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS,
OFFICES, PROGRAMS, ETC.**

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

***§5-16-3. Public employees insurance agency continued; appointment, qualification, compensation and duties of director of agency; employees; civil service coverage; director vested after specified date with powers of public employees insurance board; expiration of agency.**

1 (a) The public employees insurance agency is continued,
2 and consists of the director, the finance board, the advisory
3 board and any employees who may be authorized by law. The
4 director shall be appointed by the governor, with the advice and
5 consent of the Senate. He or she shall serve at the will and
6 pleasure of the governor, unless earlier removed from office for
7 cause as provided by law. The director shall have at least three
8 years experience in health insurance administration prior to
9 appointment as director. The director shall receive actual
10 expenses incurred in the performance of official business. The
11 director shall employ such administrative, technical and clerical
12 employees that are required for the proper administration of the
13 insurance programs provided for in this article. The director

***Clerk's Note:** This section was also amended by H. B. 2525 (Chapter 240), which passed prior to this act.

14 shall perform the duties that are required of him or her under
15 the provisions of this article and is the chief administrative
16 officer of the public employees insurance agency. The director
17 may employ a deputy director.

18 (b) All positions in the agency, except for the director, his
19 or her personal secretary, the deputy director and the chief
20 financial officer shall be included in the classified service of the
21 civil service system pursuant to article six, chapter twenty-nine
22 of this code. Any person required to be included in the classi-
23 fied service by the provisions of this subsection who was
24 employed in any of the positions included in this subsection on
25 or after the effective date of this article shall not be required to
26 take and pass qualifying or competitive examinations upon or
27 as a condition to being added to the classified service: *Pro-*
28 *vided,* That no person required to be included in the classified
29 service by the provisions of this subsection who was employed
30 in any of the positions included in this subsection as of the
31 effective date of this section shall be thereafter severed,
32 removed or terminated in his or her employment prior to his or
33 her entry into the classified service except for cause as if the
34 person had been in the classified service when severed,
35 removed or terminated.

36 (c) The director is responsible for the administration and
37 management of the public employees insurance agency as
38 provided for in this article and in connection with his or her
39 responsibility may make all rules necessary to effectuate the
40 provisions of this article. Nothing in section four or five of this
41 article limits the director's ability to manage on a day-to-day
42 basis the group insurance plans required or authorized by this
43 article, including, but not limited to, administrative contracting,
44 studies, analyses and audits, eligibility determinations, utiliza-
45 tion management provisions and incentives, provider negotia-
46 tions, provider contracting and payment, designation of covered
47 and noncovered services, offering of additional coverage

48 options or cost containment incentives, pursuit of coordination
49 of benefits and subrogation, or any other actions which would
50 serve to implement the plan or plans designed by the finance
51 board.

52 (d) The public employees insurance agency shall terminate
53 in the manner provided in article ten, chapter four of this code,
54 on the first day of July, two thousand one, unless extended by
55 legislation enacted before the termination date: *Provided*, That
56 the public employees insurance agency advisory board, created
57 in section six of this article, shall terminate in the manner
58 provided in article ten, chapter four of this code on the first day
59 of July, one thousand nine hundred ninety-six.

CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

ARTICLE 1. GENERAL PROVISIONS.

§5F-1-3. Oath; bond; compensation.

1 (a) Each person appointed to serve as a secretary shall take
2 the oath or affirmation prescribed by section five, article four
3 of the constitution, and the oath shall be certified by the person
4 who administers the same and filed in the office of the secretary
5 of state.

6 (b) Each person appointed shall give bond in the penalty of
7 twenty-five thousand dollars conditioned for the faithful
8 performance of the duties of the office. The bond shall be
9 approved by the attorney general as to form and by the governor
10 as to sufficiency. The surety of the bond may be a bonding or
11 surety company, in which case the premium shall be paid out of
12 the appropriation made for the administration of the depart-
13 ment.

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-2. Salaries of certain state officers.

§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of such officers.

§6-7-2. Salaries of certain state officers.

1 (a) The salaries for each of the state constitutional officers
2 are as follows:

3 (1) The salary of the governor is ninety thousand dollars per
4 year;

5 (2) The salary of the attorney general is seventy-five
6 thousand dollars per year;

7 (3) The salary of the auditor is seventy thousand dollars per
8 year;

9 (4) The salary of the secretary of state is sixty-five thousand
10 dollars per year;

11 (5) The salary of the commissioner of agriculture is seventy
12 thousand dollars per year; and

13 (6) The salary of the state treasurer is seventy thousand
14 dollars per year.

15 (b) Beginning in the calendar year two thousand five, and
16 for each calendar year thereafter, salaries for each of the state
17 constitutional officers shall be as follows:

18 (1) The salary of the governor shall be ninety-five thousand
19 dollars per year;

20 (2) The salary of the attorney general shall be eighty
21 thousand dollars per year;

22 (3) The salary of the auditor shall be seventy-five thousand
23 dollars per year;

24 (4) The salary of the secretary of state shall be seventy
25 thousand dollars per year;

26 (5) The salary of the commissioner of agriculture shall be
27 seventy-five thousand dollars per year; and

28 (6) The salary of the state treasurer shall be seventy-five
29 thousand dollars per year.

**§6-7-2a. Terms of certain appointive state officers; appointment;
qualifications; powers and salaries of such officers.**

1 (a) Each of the following appointive state officers named in
2 this subsection shall be appointed by the governor, by and with
3 the advice and consent of the Senate. Each of the appointive
4 state officers serves at the will and pleasure of the governor for
5 the term for which the governor was elected and until the
6 respective state officers' successors have been appointed and
7 qualified. Each of the appointive state officers are subject to the
8 existing qualifications for holding each respective office and
9 each has and is hereby granted all of the powers and authority
10 and shall perform all of the functions and services heretofore
11 vested in and performed by virtue of existing law respecting
12 each office.

13 Prior to the first day of July, two thousand one, each such
14 named appointive state officer shall continue to receive the
15 annual salaries they were receiving as of the effective date of
16 the enactment of this section in two thousand one, and thereaf-
17 ter, notwithstanding any other provision of this code to the
18 contrary, the annual salary of each named appointive state
19 officer shall be as follows:

20 Administrator, division of highways, ninety thousand
21 dollars; administrator, state tax division, sixty-five thousand
22 dollars; administrator, division of corrections, seventy-five
23 thousand dollars; administrator, division of natural resources,
24 seventy thousand dollars; superintendent, state police, seventy-
25 five thousand dollars; administrator, lottery division, seventy-
26 five thousand dollars; director, public employees insurance
27 agency, seventy-five thousand dollars; administrator, division
28 of banking, sixty thousand dollars; administrator, division of
29 insurance, sixty thousand dollars; administrator, division of
30 culture and history, fifty-five thousand dollars; administrator,
31 alcohol beverage control commission, seventy thousand dollars;
32 administrator, division of motor vehicles, seventy thousand
33 dollars; director, division of personnel, fifty-five thousand
34 dollars; adjutant general, seventy-five thousand dollars;
35 chairman, health care authority, seventy thousand dollars;
36 members, health care authority, sixty thousand dollars; director,
37 human rights commission, forty-five thousand dollars; adminis-
38 trator, division of labor, sixty thousand dollars; administrator,
39 division of veterans affairs, forty-five thousand dollars;
40 administrator, division of emergency services, forty-five
41 thousand dollars; members, board of parole, forty-five thousand
42 dollars; members, employment security review board, seven-
43 teen thousand dollars; members, workers' compensation appeal
44 board, seventeen thousand eight hundred dollars; administrator,
45 bureau of employment programs, seventy thousand dollars;
46 administrator, bureau of commerce, seventy thousand dollars;
47 administrator, bureau of environment, seventy thousand dollars;
48 director, office of miner's health, safety and training, sixty-five
49 thousand dollars. Secretaries of the departments shall be paid an
50 annual salary as follows: Health and human resources, ninety
51 thousand dollars; transportation, seventy-five thousand dollars;
52 tax and revenue, seventy-five thousand dollars; military affairs
53 and public safety, seventy-five thousand dollars; administration,
54 seventy-five thousand dollars; education and the arts, seventy-

55 five thousand dollars; environmental protection, seventy-five
56 thousand dollars.

57 (b) Each of the state officers named in this subsection shall
58 continue to be appointed in the manner prescribed in this code,
59 and, prior to the first day of July, two thousand one, each of the
60 state officers named in this subsection shall continue to receive
61 the annual salaries he or she was receiving as of the effective
62 date of the enactment of this section in two thousand one, and
63 shall thereafter, notwithstanding any other provision of this
64 code to the contrary, be paid an annual salary as follows:

65 Administrator, division of risk and insurance management,
66 fifty-five thousand dollars; director, division of rehabilitation
67 services, sixty thousand dollars; executive director, educational
68 broadcasting authority, sixty thousand dollars; secretary, library
69 commission, sixty-seven thousand dollars; director, geological
70 and economic survey, fifty-two thousand five hundred dollars;
71 executive director, prosecuting attorneys institute, sixty
72 thousand dollars; executive director, public defender services,
73 sixty thousand dollars; commissioner, bureau of senior services,
74 seventy thousand dollars; director, state rail authority, fifty-five
75 thousand dollars; executive secretary, women's commission,
76 thirty-one thousand dollars; director, hospital finance authority,
77 twenty-six thousand dollars; member, racing commission, five
78 thousand dollars; chairman, public service commission, seventy
79 thousand dollars; members, public service commission, seventy
80 thousand dollars.

81 (c) No increase in the salary of any appointive state officer
82 pursuant to this section shall be paid until and unless the
83 appointive state officer has first filed with the state auditor and
84 the legislative auditor a sworn statement, on a form to be
85 prescribed by the attorney general, certifying that his or her
86 spending unit is in compliance with any general law providing
87 for a salary increase for his or her employees. The attorney

88 general shall prepare and distribute the form to the affected
89 spending units.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 4. PROSECUTING ATTORNEY, REWARDS AND LEGAL ADVICE.

***§7-4-6. West Virginia prosecuting attorneys institute.**

1 (a) There is continued the West Virginia prosecuting
2 attorneys institute, a public body whose membership shall
3 consist of the fifty-five elected county prosecuting attorneys in
4 the state. The institute shall meet at least once each calendar
5 year and the presence of twenty-eight of the fifty-five prosecu-
6 tors at any meeting constitutes a quorum for the conduct of the
7 institute's business.

8 (b) There is continued the executive council of the West
9 Virginia prosecuting attorneys institute which shall consist of
10 five prosecuting attorneys elected by the membership of the
11 West Virginia prosecuting attorneys institute at its annual
12 meeting and two persons appointed annually by the county
13 commissioner's association of West Virginia. The executive
14 council shall elect one member of the council to serve as
15 chairman of the institute for a term of one year without
16 compensation. The executive council shall serve as the regular
17 executive body of the institute.

18 (c) There is continued the position of executive director of
19 the West Virginia prosecuting attorneys institute to be em-
20 ployed by the executive council of the institute. The executive
21 director of the West Virginia prosecuting attorneys institute
22 shall serve at the will and pleasure of the executive council of
23 the institute. The executive director shall be licensed to practice
24 law in the state of West Virginia and shall devote full time to

***Clerk's Note:** This section was also amended by H. B. 2958 (Chapter 239), which passed prior to this act.

25 his or her official duties and may not engage in the private
26 practice of law.

27 (d) The duties and responsibilities of the institute, as
28 implemented by and through its executive council and its
29 executive director, shall include the following:

30 (1) The provision for special prosecuting attorneys to
31 pursue a criminal matter in any county upon the request of a
32 circuit court judge of that county and upon the approval of the
33 executive council;

34 (2) The establishment and implementation of general and
35 specialized training programs for prosecuting attorneys and
36 their professional staffs;

37 (3) The provision of materials for prosecuting attorneys and
38 their professional staffs, including legal research, technical
39 assistance and technical and professional publications;

40 (4) The compilation and dissemination of information on
41 behalf of prosecuting attorneys and their professional staffs on
42 current developments and changes in the law and the adminis-
43 tration of criminal justice;

44 (5) The establishment and implementation of uniform
45 reporting procedures for prosecuting attorneys and their
46 professional staffs in order to maintain and to provide accurate
47 and timely data and information relative to criminal prosecuto-
48 rial matters;

49 (6) The acceptance and expenditure of, grants and gifts and
50 acceptance of services from any public or private source;

51 (7) The entering into of agreements and contracts with
52 public or private agencies or educational institutions;

53 (8) The identification of experts and other resources for use
54 by prosecutors in criminal matters;

55 (9) The recommendation to the Legislature or the supreme
56 court of appeals of the state of West Virginia on measures
57 required, or procedural rules to be promulgated, to make
58 uniform the processing of juvenile cases in the fifty-five
59 counties of the state; and

60 (10) The development of a written handbook for prosecu-
61 tors and their assistants to use which delineates relevant
62 information concerning the elements of various crimes in West
63 Virginia and other information the institute considers appropri-
64 ate.

65 (e) Each prosecuting attorney is subject to appointment by
66 the institute to serve as a special prosecuting attorney in any
67 county where the prosecutor for that county or his or her office
68 has been disqualified from participating in a particular criminal
69 case. The circuit judge of any county of this state, who disquali-
70 fies the prosecutor or his or her office from participating in a
71 particular criminal case in that county, shall seek the appoint-
72 ment by the institute of a special prosecuting attorney to
73 substitute for the disqualified prosecutor. The executive director
74 of the institute shall, upon written request to the institute by any
75 circuit judge as a result of disqualification of the prosecutor or
76 for other good cause shown, and upon approval of the executive
77 council, appoint a prosecuting attorney to serve as a special
78 prosecuting attorney. The special prosecuting attorney ap-
79 pointed shall serve without any further compensation other than
80 that paid to him or her by his or her county, except that he or
81 she is entitled to be reimbursed for his or her legitimate
82 expenses associated with travel, mileage and room and board
83 from the county to which he or she is appointed as a prosecutor.
84 The county commission in which county he or she is special
85 prosecutor is responsible for all expenses associated with the

86 prosecution of the criminal action. No person who is serving as
 87 a prosecuting attorney or assistant prosecuting attorney of any
 88 county is required to take an additional oath when appointed to
 89 serve as a special prosecuting attorney.

90 (f) The executive director of the institute shall maintain an
 91 appointment list that shall include the names of all fifty-five
 92 prosecuting attorneys and that shall also include the names of
 93 any assistant prosecuting attorney who wishes to serve as a
 94 special prosecuting attorney upon the same terms and condi-
 95 tions as set forth in this section. The executive director of the
 96 institute, with the approval of the executive council, shall
 97 appoint special prosecuting attorneys from the appointment list
 98 for any particular matter giving due consideration to the
 99 proximity of the proposed special prosecuting attorney's home
 100 county to the county requesting a special prosecutor and giving
 101 due consideration to the expertise of the special prosecuting
 102 attorney.

103 (g) Each county commission shall pay, on a monthly basis,
 104 a special prosecution premium to the treasurer of the state for the
 105 funding of the West Virginia prosecuting attorneys institute. The
 106 monthly premiums shall be paid according to the following
 107 schedule:

MONTHLY PREMIUMS				
Assessed Valuation of Property				
of All Classes in the County				
Category	Minimum	Maximum	Premium	
A	\$1,500,000,000	Unlimited	\$400	
B	\$1,000,000,000	\$1,499,999,000	\$375	
C	\$ 800,000,000	\$ 999,999,000	\$350	

2550			SALARIES		[Ch. 262
115	D	\$ 700,000,000	\$ 799,999,000	\$325	
116	E	\$ 600,000,000	\$ 699,999,000	\$300	
117	F	\$ 500,000,000	\$ 599,999,000	\$250	
118	G	\$ 400,000,000	\$ 499,999,000	\$200	
119	H	\$ 300,000,000	\$ 399,999,000	\$150	
120	I	\$ 200,000,000	\$ 299,999,000	\$100	
121	J	-0-	\$ 199,999,000	\$ 50	

122 Upon receipt of a premium, grant, reimbursement or other
123 funding source, excluding federal funds as provided in article
124 two, chapter four of this code, the treasurer shall deposit the
125 funds into a special revenue fund to be known as the "West
126 Virginia prosecuting attorneys institute fund". All costs of
127 operating the West Virginia prosecuting attorneys institute shall
128 be paid from the West Virginia prosecuting attorneys institute
129 fund upon proper authorization by the executive council or by
130 the executive director of the institute and subject to annual
131 appropriation by the Legislature of the amounts contained
132 within the fund.

133 (h) The West Virginia prosecuting attorneys institute shall
134 continue to exist until the first day of July, two thousand five,
135 unless continued by an act of the Legislature. The institute shall
136 annually by the first day of the regular legislative session
137 provide the joint committee on government and finance with a
138 report setting forth the activities of the institute and suggestions
139 for legislative action.

140 (i) Neither the institute nor its employees acting in their
141 employment capacity shall engage in activities before govern-
142 mental bodies which advocate positions on issues other than

143 those issues consistent with the duties of the institute set forth
144 in subsection (d) of this section.

**CHAPTER 10. PUBLIC LIBRARIES; PUBLIC
RECREATION; ATHLETIC ESTABLISHMENTS;
MONUMENTS AND MEMORIALS; ROSTER OF
SERVICEMEN; EDUCATIONAL
BROADCASTING AUTHORITY.**

ARTICLE 1. PUBLIC LIBRARIES.

§10-1-13. State library commission — officers.

1 (a) The officers of the commission are a chairman, elected
2 from the members of the commission, for a term of one year,
3 and a secretary, who shall be a person trained in modern library
4 methods, not a member of the commission. The secretary shall
5 be appointed by the commission and shall serve at the will of
6 the commission. The commission may establish headquarters
7 or maintain its office at any point in the state determines.

8 (b) The secretary shall keep a record of the proceedings of
9 the commission, have charge of its work in organizing new
10 libraries and improving those already established, supervise the
11 work of the traveling libraries, and in general perform such
12 duties as may from time to time be assigned to him or her by
13 the commission.

CHAPTER 11. TAXATION.

ARTICLE 1. SUPERVISION.

**§11-1-1. Office of tax commissioner continued and designated the
state tax division; appointment, term, oath and bond
of commissioner; powers and duties generally; sec-
tions of division; assistant tax commissioner; assistant
attorneys general to assist commissioner.**

1 (a) The office of the tax commissioner is continued in all
2 respects as previously constituted in the state government, but
3 is hereby designated as the state tax division of the department
4 of tax and revenue.

5 (b) The tax commissioner is the chief executive officer of
6 the state tax division and shall be appointed by the governor, by
7 and with the advice and consent of the Senate, to serve at the
8 will and pleasure of the governor for the term for which the
9 governor was elected and until a successor has been appointed
10 and has qualified.

11 (c) The tax commissioner, before entering upon the duties
12 of office, shall take the oath or affirmation prescribed by
13 section 5, article IV of the constitution. The tax commissioner
14 shall give bond with good security, to be approved by the
15 governor, in the penalty of fifteen thousand dollars. The tax
16 commissioner shall be repaid his or her actual disbursements
17 for traveling expenses. The tax commissioner shall be provided
18 with an office in the capitol and with furniture, office equip-
19 ment and any necessary clerical assistance.

20 (d) The tax commissioner has control and supervision of the
21 state tax division and is responsible for the work of each of its
22 sections or other subunits. Each section or bureau shall be
23 headed by a director appointed by the tax commissioner and
24 who is responsible to the tax commissioner for the work of his
25 or her section or bureau. The tax commissioner may create any
26 sections or bureaus and employ any necessary staff or employ-
27 ees to administer the state tax laws for which the tax commis-
28 sioner or tax division is responsible, within the amount of
29 expenditures appropriated for operation of the tax division by
30 the Legislature. The tax commissioner has authority to appoint
31 an assistant tax commissioner who shall be his or her principal
32 assistant. The powers and duties vested in the tax commissioner
33 by this chapter and any other provisions of law may be dele-

34 gated by the tax commissioner to the assistant or other employ-
35 ees, but the tax commissioner is responsible for all official acts
36 of his or her delegates.

37 (e) The tax commissioner, if he or she considers the action
38 necessary, may request the attorney general to appoint assistant
39 attorneys general who shall perform duties as required by the
40 tax commissioner. The attorney general, in pursuance of the
41 request, may select and appoint assistant attorneys general, with
42 the consent of the tax commissioner, to serve during the will
43 and pleasure of the attorney general, and the assistants shall be
44 paid out of any funds made available for that purpose by the
45 Legislature to the state tax division.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 29B. HEALTH CARE AUTHORITY.

§16-29B-5. West Virginia health care authority; composition of the board; qualifications; terms; oath; expenses of members; vacancies; appointment of chairman, and meetings of the board.

1 The “West Virginia Health Care Cost Review Authority” is
2 continued as an autonomous division of the department of
3 health and human resources and shall be known as the “West
4 Virginia Health Care Authority”, hereinafter referred to as the
5 board. Any references in this code to the West Virginia health
6 care cost review authority means the West Virginia health care
7 authority.

8 (a) The board shall consist of three members, appointed by
9 the governor, with the advice and consent of the Senate. The
10 board members shall be citizens and residents of this state. No
11 more than two of the board members may be members of the
12 same political party. One board member shall have a back-
13 ground in health care finance or economics, one board member

14 shall have previous employment experience in human services,
15 business administration or substantially related fields and one
16 board member shall be a consumer of health services with a
17 demonstrated interest in health care issues.

18 (b) Each board member shall, before entering upon the
19 duties of his or her office, take and subscribe to the oath
20 provided by section five, article IV of the constitution of the
21 state of West Virginia, which oath shall be filed in the office of
22 the secretary of state. The governor shall designate one of the
23 board members to serve as chairman at the governor's will and
24 pleasure. The chairman shall be the chief administrative officer
25 of the board. The governor may remove any board member only
26 for incompetency, neglect of duty, gross immorality, malfea-
27 sance in office or violation of the provisions of this article.
28 Appointments are for terms of six years, except that an appoint-
29 ment to fill a vacancy shall be for the unexpired term only.

30 (c) No person while in the employ of, or holding any
31 official relation to, any hospital or health care provider subject
32 to the provisions of this article, or who has any pecuniary
33 interest in any hospital or health care provider, may serve as a
34 member of the board or as an employee of the board. Nor may
35 any board member be a candidate for or hold public office or be
36 a member of any political committee while acting as a board
37 member; nor may any board member or employee of the board
38 receive anything of value, either directly or indirectly, from any
39 third-party payor or health care provider. If any of the board
40 members become a candidate for any public office or for
41 membership on any political committee, the governor shall
42 remove the board member from the board and shall appoint a
43 new board member to fill the vacancy created. No board
44 member or former board member may accept employment with
45 any hospital or health care provider subject to the jurisdiction
46 of the board in violation of the West Virginia governmental
47 ethics act, chapter six-b of this code: *Provided*, That the act

48 shall not apply to employment accepted after termination of the
49 board.

50 (d) The concurrent judgment of two of the board members
51 when in session as the board shall be considered the action of
52 the board. A vacancy in the board shall not affect the right or
53 duty of the remaining board members to function as a board.

CHAPTER 19. AGRICULTURE.

ARTICLE 23. HORSE AND DOG RACING.

§19-23-4. West Virginia racing commission continued as a public corporation; composition; terms; vacancies; qualifications, expenses of members; principal office; meetings; election of officers; quorum; inspection of records; annual report.

1 (a) The “West Virginia racing commission,” is continued in
2 existence as a public corporation and, as such, may contract and
3 be contracted with, plead and be impleaded, sue and be sued
4 and have and use a common seal.

5 (b) The racing commission shall consist of three members,
6 not more than two of whom shall belong to the same political
7 party, to be appointed by the governor by and with the advice
8 and consent of the Senate. The term of office for the members
9 of the racing commission is four years, and until their succes-
10 sors have been appointed and have qualified, and members of
11 the racing commission may serve any number of successive
12 terms. The members of the racing commission in office on the
13 effective date of the amendment and reenactment of this section
14 in two thousand one shall, unless removed by the governor after
15 the effective date of this article, continue to serve until their
16 terms expire and until their successors have been appointed and
17 have qualified. Any vacancy in the office of a member of the
18 racing commission shall be filled by appointment by the

19 governor for the unexpired term of the member whose office
20 shall be vacant. No person is eligible for appointment to or to
21 serve upon the racing commission:

22 (1) Unless he or she is an actual and bona fide resident of
23 this state, shall have resided in this state for a period of at least
24 five years next preceding his or her appointment, shall be a
25 qualified voter of this state and be not less than twenty-five
26 years of age;

27 (2) Who directly or indirectly, or in any capacity, owns or
28 has any interest, in any manner whatever, in any racetrack
29 where horse or dog race meetings may be held, including, but
30 not limited to, an interest as owner, lessor, lessee, stockholder
31 or employee;

32 (3) While serving as a member of the Legislature or as an
33 elective officer of this state; or

34 (4) Who has been or shall be convicted of an offense which,
35 under the law of this state or any other state or of the United
36 States of America, constitutes a felony, or is a violation of
37 article four, chapter sixty-one of this code.

38 (c) Each member of the racing commission shall be
39 reimbursed for all reasonable and necessary expenses actually
40 incurred in the performance of his or her duties as a member of
41 the racing commission.

42 (d) The racing commission shall have its principal office at
43 the seat of government, and shall meet annually at its principal
44 office in the month of January, and at any other times and
45 places designated by its chairman. At the annual meeting the
46 racing commission shall elect from its membership a chairman
47 and any other officers that are desired. Other meetings of the
48 racing commission may be called by the chairman on such

49 notice to the other members prescribed by the racing commis-
50 sion.

51 (e) A majority of the members of the racing commission
52 constitute a quorum for the transaction of its business or the
53 exercise of any of its powers and authority. No person not a
54 bona fide member of the racing commission shall vote upon or
55 participate in the deliberations of the racing commission on any
56 matter which may come before it. All racing commission
57 records, except as otherwise provided by law, shall be open to
58 public inspection during regular office hours.

59 (f) As soon as possible after the close of each calendar year,
60 the racing commission shall submit to the governor a report of
61 the transactions of the racing commission during the preceding
62 calendar year.

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

ARTICLE 2. THE COMMISSIONER OF THE BUREAU OF EMPLOYMENT PROGRAMS.

§21A-2-5. Traveling expenses.

1 The commissioner of the bureau of employment programs
2 shall receive the necessary traveling expenses incident to the
3 performance of his or her duties. Requisition for traveling
4 expenses shall be accompanied by a sworn itemized statement
5 which shall be filed with the auditor and preserved as a public
6 record.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 1. DIVISION OF ENVIRONMENTAL PROTECTION.

***§22-1-6. Secretary of the department of environmental protection.**

*Clerk's Note: This section was also amended by H. B. 2218 (Chapter 123), which passed subsequent to this act.

1 (a) The secretary is the chief executive officer of the
2 department. Subject to section seven of this article and other
3 provisions of law, the secretary shall organize the department
4 into those offices, sections, agencies and other units of activity
5 found by the secretary to be desirable for the orderly, efficient
6 and economical administration of the department and for the
7 accomplishment of its objects and purposes. The secretary may
8 appoint a deputy secretary, chief of staff, assistants, hearing
9 officers, clerks, stenographers and other officers, technical
10 personnel and employees needed for the operation of the
11 department and may prescribe their powers and duties and fix
12 their compensation within amounts appropriated.

13 (b) The secretary may designate supervisory officers or
14 other officers or employees of the department to substitute for
15 him or her on any board or commission established under this
16 code or to sit in his or her place in any hearings, appeals,
17 meetings or other activities with the substitute having the same
18 powers, duties, authority and responsibility as the director. The
19 secretary has the power to delegate, as he or she considers
20 appropriate, to supervisory officers or other officers or employ-
21 ees of the department his or her powers, duties, authority and
22 responsibility relating to issuing permits, hiring and training
23 inspectors and other employees of the department, conducting
24 hearings and appeals and any other duties and functions set
25 forth in this chapter or elsewhere in this code.

26 (c) The secretary has responsibility for the conduct of the
27 intergovernmental relations of the department, including
28 assuring:

29 (1) That the department carries out its functions in a manner
30 which supplements and complements the environmental
31 policies, programs and procedures of the federal government,
32 other state governments and other instrumentalities of this state;
33 and

34 (2) That appropriate officers and employees of the division
35 consult with individuals responsible for making policy relating
36 to environmental issues in the federal government, other state
37 governments and other instrumentalities of this state concerning
38 differences over environmental policies, programs and proce-
39 dures and concerning the impact of statutory law and rules upon
40 the environment of this state.

41 (d) In addition to other powers, duties and responsibilities
42 granted and assigned to the secretary by this chapter, the
43 secretary may:

44 (1) Sign and execute in the name of the state by the “
45 department of environmental protection” any contract or
46 agreement with the federal government or its departments or
47 agencies, subdivisions of the state, corporations, associations,
48 partnerships or individuals: *Provided*, That the powers granted
49 to the secretary to enter into agreements or contracts and to
50 make expenditures and obligations of public funds under this
51 subdivision may not exceed or be interpreted as authority to
52 exceed the powers granted by the Legislature to the various
53 commissioners, directors or board members of the various
54 departments, agencies or boards that comprise and are incorpo-
55 rated into each secretary’s department pursuant to the provi-
56 sions of chapter five-f of this code;

57 (2) Conduct research in improved environmental protection
58 methods and disseminate information to the citizens of this
59 state;

60 (3) Enter private lands to make surveys and inspections for
61 environmental protection purposes; to investigate for violations
62 of statutes or rules which the division is charged with enforcing;
63 to serve and execute warrants and processes; to make arrests;
64 issue orders, which for the purposes of this chapter include

65 consent agreements; and to otherwise enforce the statutes or
66 rules which the division is charged with enforcing;

67 (4) Acquire for the state in the name of the “ department of
68 environmental protection” by purchase, condemnation, lease or
69 agreement, or accept or reject for the state, in the name of the
70 department of environmental protection, gifts, donations,
71 contributions, bequests or devises of money, security or
72 property, both real and personal, and any interest in property;

73 (5) Provide for workshops, training programs and other
74 educational programs, apart from or in cooperation with other
75 governmental agencies, necessary to insure adequate standards
76 of public service in the department. The secretary may provide
77 for technical training and specialized instruction of any
78 employee. Approved educational programs, training and
79 instruction time may be compensated for as a part of regular
80 employment. The secretary is authorized to pay out of federal
81 or state funds, or both, as funds are available, fees and expenses
82 incidental to the educational programs, training, and instruction.
83 Eligibility for participation by employees will be in accordance
84 with guidelines established by the secretary;

92 (6) Issue certifications required under 33 U.S.C. §1341 of
93 the federal Clean Water Act and enter into agreements in
94 accordance with the provisions of section seven-a, article
95 eleven of this chapter. Prior to issuing any certification the
96 secretary shall solicit from the division of natural resources
97 reports and comments concerning the possible certification. The
98 division of natural resources shall direct the reports and
99 comments to the secretary for consideration; and

100 (7) Notwithstanding any provisions of this code to the
101 contrary, employ in-house counsel to perform all legal services
102 for the secretary and the department, including, but not limited
103 to, representing the secretary, any chief, the department or any

104 office of the department in any administrative proceeding or in
105 any proceeding in any state or federal court. Additionally, the
106 secretary may call upon the attorney general for legal assistance
107 and representation as provided by law.

108 (e) The secretary shall be appointed by the governor, by and
109 with the advice and consent of the Senate, and serves at the will
110 and pleasure of the governor.

111 (f) At the time of his or her initial appointment, the
112 secretary must be at least thirty years old and must be selected
113 with special reference and consideration given to his or her
114 administrative experience and ability, to his or her demon-
115 strated interest in the effective and responsible regulation of the
116 energy industry and the conservation and wise use of natural
117 resources. The secretary must have at least a bachelor's degree
118 in a related field and at least three years of experience in a
119 position of responsible charge in at least one discipline relating
120 to the duties and responsibilities for which the secretary will be
121 responsible upon assumption of the office. The secretary may
122 not be a candidate for or hold any other public office, may not
123 be a member of any political party committee and shall
124 immediately forfeit and vacate his or her office as secretary in
125 the event he or she becomes a candidate for or accepts appoint-
126 ment to any other public office or political party committee.

127 (g) The secretary shall be allowed and paid necessary
128 expenses incident to the performance of his or her official
129 duties. Prior to the assumption of the duties of his or her office,
130 the secretary shall take and subscribe to the oath required of
131 public officers prescribed by section five, article IV of the
132 constitution of West Virginia and shall execute a bond, with
133 surety approved by the governor, in the penal sum of ten
134 thousand dollars. The executed oath and bond shall be filed in
135 the office of the secretary of state. Premiums on the bond shall
136 be paid from the department funds.

**CHAPTER 22A. MINERS' HEALTH,
SAFETY AND TRAINING.**

**ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING;
ADMINISTRATION; ENFORCEMENT.**

**§22A-1-3. Director of the office of miners' health, safety and
training.**

1 (a) The director of the office of miners' health, safety and
2 training is responsible for surface and underground safety
3 inspections of coal mines and the administration of the office of
4 miners' health, safety and training.

5 (b) The director is the chief executive officer of the office.
6 Subject to provisions of law, he or she shall organize the office
7 into those offices, sections, agencies and other units of activity
8 found by the director to be desirable for the orderly, efficient
9 and economical administration of the office. The director may
10 appoint any other employees needed for the operation of the
11 office and may prescribe their powers and duties and fix their
12 compensation within amounts appropriated.

13 (c) The director shall be appointed by the governor, by and
14 with the advice and consent of the Senate, and shall serve at the
15 will and pleasure of the governor.

16 (d) The director of the office of miners' health, safety and
17 training shall be a citizen of West Virginia, shall be a compe-
18 tent person of good repute and temperate habits with a demon-
19 strated interest and five years' experience in underground coal
20 mining and shall have at least three years of experience in a
21 position of responsible charge in at least one discipline relating
22 to the duties and responsibilities for which the director will be
23 responsible upon assumption of the office of director. Special
24 reference shall be given to his or her administrative experience
25 and ability. The director shall devote all of his or her time to the
26 duties of the position of director and shall not be directly

27 interested financially in any mine in this or any other state nor
28 shall the director, either directly or indirectly, be a majority
29 owner of, or have control of or a controlling interest in, a mine
30 in this or any other state. The director shall not be a candidate
31 for or hold any other public office, shall not be a member of any
32 political party committee and shall immediately forfeit and
33 vacate his or her office as director in the event he or she
34 becomes a candidate for or accepts appointment to any other
35 public office or political party committee.

36 (e) The director shall be allowed and paid necessary
37 expenses incident to the performance of his or her official
38 duties. Prior to the assumption of his or her official duties, the
39 director shall take the oath required of public officials pre-
40 scribed by section 5, article IV of the constitution of West
41 Virginia and shall execute a bond, with surety approved by the
42 governor, in the penal sum of ten thousand dollars. The
43 executed oath and bond shall be filed in the office of the
44 secretary of state. Premiums on the bond shall be paid from
45 office funds.

CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS, AUTHORITIES, COMMISSIONS AND COMPACTS.

ARTICLE 1. WATER DEVELOPMENT AUTHORITY.

§22C-1-4. Water development authority; water development board; organization of authority and board; appointment of board members; their term of office, compensation and expenses; director of authority; compensation.

1 (a) The water development authority is continued. The
2 authority is a governmental instrumentality of the state and a
3 body corporate. The exercise by the authority of the powers
4 conferred by this article and the carrying out of its purposes and

5 duties are essential governmental functions and for a public
6 purpose.

7 (b) The authority is controlled, managed and operated by
8 the seven-member board known as the water development
9 board. The director of the division of environmental protection,
10 and the commissioner of the bureau of public health and the
11 state officer or employee who in the judgment of the governor
12 is most responsible for economic or community development
13 are members ex officio of the board. The governor shall
14 designate annually the member who is the state officer or
15 employee most responsible for economic or community
16 development. The other four members of the board are ap-
17 pointed by the governor, by and with the advice and consent of
18 the Senate, for terms of two, three, four and six years, respec-
19 tively. The successor of each such appointed member shall be
20 appointed for a term of six years in the same manner the
21 original appointments were made, except that any person
22 appointed to fill a vacancy occurring prior to the expiration of
23 the term for which his or her predecessor was appointed shall
24 be appointed only for the remainder of such term. Each board
25 member serves until the appointment and qualification of his or
26 her successor. No more than two of the appointed board
27 members shall at any one time belong to the same political
28 party. Appointed board members may be reappointed to serve
29 additional terms.

30 (c) All members of the board shall be citizens of the state.
31 Each appointed member of the board, before entering upon his
32 or her duties, shall comply with the requirements of article one,
33 chapter six of this code and give bond in the sum of twenty-five
34 thousand dollars in the manner provided in article two, chapter
35 six of this code. The governor may remove any board member
36 for cause as provided in article six, chapter six of this code.

37 (d) Annually the board shall elect one of its appointed
38 members as chair and another as vice chair, and shall appoint
39 a secretary-treasurer, who need not be a member of the board.
40 Four members of the board is a quorum and the affirmative vote
41 of four members is necessary for any action taken by vote of the
42 board. No vacancy in the membership of the board impairs the
43 rights of a quorum by such vote to exercise all the rights and
44 perform all the duties of the board and the authority. The person
45 appointed as secretary-treasurer, including a board member if
46 he or she is appointed, shall give bond in the sum of fifty
47 thousand dollars in the manner provided in article two, chapter
48 six of this code.

49 (e) The secretary of the division of environmental protec-
50 tion, the commissioner of the bureau of public health and the
51 state officer or employee most responsible for economic or
52 community development shall not receive any compensation for
53 serving as board members. Each of the four appointed members
54 of the board shall receive an annual salary of five thousand
55 dollars, payable in monthly installments. Each of the seven
56 board members shall be reimbursed for all reasonable and
57 necessary expenses actually incurred in the performance of his
58 or her duties as a member of the board. All expenses incurred
59 by the board are payable solely from funds of the authority or
60 from funds appropriated for that purpose by the Legislature and
61 no liability or obligation shall be incurred by the authority
62 beyond the extent to which moneys are available from funds of
63 the authority or from such appropriations.

64 (f) There shall also be a director of the authority appointed
65 by the board. The compensation of the director shall be fixed by
66 the board.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 1. GENERAL PROVISIONS.

***§24-1-3. Commission continued; membership; chairman; compensation.**

1 (a) The public service commission of West Virginia is
2 continued and directed as provided by this chapter, chapter
3 twenty-four-a, chapter twenty-four-b and chapter twenty-four-d
4 of this code. After having conducted a performance audit
5 through its joint committee on government operations, pursuant
6 to section nine, article ten, chapter four of this code, the
7 Legislature hereby finds and declares that the public service
8 commission should be continued and reestablished. Accord-
9 ingly, notwithstanding the provisions of section five, article ten,
10 chapter four of this code, the public service commission shall
11 continue to exist until the first day of July, two thousand one.
12 The public service commission may sue and be sued by that
13 name. The public service commission shall consist of three
14 members who shall be appointed by the governor with the
15 advice and consent of the Senate. The commissioners shall be
16 citizens and residents of this state and at least one of them shall
17 be duly licensed to practice law in West Virginia, with not less
18 than ten years' actual work experience in the legal profession
19 as a member of a state bar. No more than two of the commis-
20 sioners shall be members of the same political party. Each
21 commissioner shall, before entering upon the duties of his or
22 her office, take and subscribe to the oath provided by section
23 five, article IV of the constitution of this state. The oath shall be
24 filed in the office of the secretary of state. The governor shall
25 designate one of the commissioners to serve as chairman at the
26 governor's will and pleasure. The chairman shall be the chief
27 administrative officer of the commission. The governor may
28 remove any commissioner only for incompetency, neglect of
29 duty, gross immorality, malfeasance in office or violation of
30 subsection (c) of this section.

***Clerk's Note:** This section was also amended by S. B. 449 (Chapter 284), which passed prior to this act.

31 (b) The unexpired terms of members of the public service
32 commission at the time this subsection becomes effective are
33 continued. Upon expiration of the terms, appointments are for
34 terms of six years, except that an appointment to fill a vacancy
35 is for the unexpired term only. The commissioners whose terms
36 are terminated by the provisions of this subsection are eligible
37 for reappointment.

38 (c) No person while in the employ of, or holding any
39 official relation to, any public utility subject to the provisions
40 of this chapter, or holding any stocks or bonds of a public utility
41 subject to the provisions of this chapter, or who is pecuniarily
42 interested in a public utility subject to the provisions of this
43 chapter, may serve as a member of the commission or as an
44 employee of the commission. Nor may any commissioner be a
45 candidate for or hold public office, or be a member of any
46 political committee, while acting as a commissioner; nor may
47 any commissioner or employee of the commission receive any
48 pass, free transportation or other thing of value, either directly
49 or indirectly, from any public utility or motor carrier subject to
50 the provisions of this chapter. In case any of the commissioners
51 becomes a candidate for any public office or a member of any
52 political committee, the governor shall remove him or her from
53 office and shall appoint a new commissioner to fill the vacancy
54 created.

55 (d) The salaries of members of the public service commis-
56 sion and the manner in which they are paid established by the
57 prior enactment of this section are continued. Effective the first
58 day of July, two thousand one the annual salary of each
59 commissioner provided in section two-a, article seven, chapter
60 six of this code shall be paid in monthly installments from the
61 special funds in the percentages that follow:

62 (1) From the public service commission fund collected
63 under the provisions of section six, article three of this chapter,
64 eighty percent;

65 (2) From the public service commission motor carrier fund
66 collected under the provisions of section six, article six, chapter
67 twenty-four-a of this code, seventeen percent; and

68 (3) From the public service commission gas pipeline safety
69 fund collected under the provisions of section three, article five,
70 chapter twenty-four-b of this code, three percent.

71 In addition to the salary provided for all commissioners in
72 section two-a, article seven, chapter six of this code, the
73 chairman of the commission shall receive five thousand dollars
74 per annum to be paid in monthly installments from the public
75 service commission fund collected under the provisions of
76 section six, article three of this chapter.

CHAPTER 31. CORPORATIONS.

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-4. Governing body; organization and meetings; quorum; administrative expenses.

1 (a) The governing body of the authority shall consist of the
2 voting members of the board as provided for in section three of
3 this article and shall exercise all the powers given to the
4 authority in this article. On the second Monday of July of each
5 odd-numbered year, the board shall meet to elect a chairman
6 and a secretary from among its own members. The secretary of
7 the department of administration or his or her designated
8 representative shall serve as treasurer of the board. The board
9 shall otherwise meet quarterly, unless a special meeting is
10 called by its chairman.

11 (b) A majority of the members of the board constitute a
12 quorum, and a quorum must be present for the board to conduct
13 business. Unless the bylaws require a larger number, action
14 may be taken by majority vote of the members present.

15 (c) The board shall prescribe, amend and repeal bylaws and
16 rules governing the manner in which the business of the
17 authority is conducted and shall review and approve the budget
18 prepared by the executive director annually.

19 (d) On or before the first day of April, two thousand, the
20 West Virginia regional jail and correctional facility authority
21 board shall, with the advice and consent of the Senate, appoint
22 an executive director to act as its chief executive officer, to
23 serve at the will and pleasure of the board. The compensation
24 of the director shall be at the same rate as the commissioner of
25 corrections. The appointment shall be for a term of five years
26 to begin on the first day of April, two thousand. The executive
27 director may employ any other personnel he or she determines
28 necessary and may appoint counsel and legal staff for the
29 authority and retain any temporary engineering, financial and
30 other consultants or technicians that are required for any special
31 study or survey consistent with the provisions of this article.
32 The executive director may engage in negotiations and carry
33 out plans to implement the provisions of this article and
34 exercise those powers listed in section five of this article on
35 behalf of the authority. The executive director shall prepare
36 annually a budget to be submitted to the board for its review
37 and approval.

38 (e) All costs incidental to the administration of the author-
39 ity, including office expense, personal services expense and
40 current expense, shall be paid from the regional jail and
41 correctional facility development fund in accordance with
42 guidelines issued by the board of the authority.

CHAPTER 263

(H. B. 2111 — By Delegate R. M. Thompson)

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the salary of civilian employees of the state police.

Be it enacted by the Legislature of West Virginia:

That section seven, 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.

§15-2-7. Cadet selection board; qualifications for and appointment to membership in division; civilian employees.

1 (a) The superintendent shall establish within the West
2 Virginia state police a cadet selection board which shall be
3 representative of commissioned and noncommissioned officers
4 within the division.

5 (b) The superintendent shall appoint a member to the
6 position of trooper from among the top three names on the
7 current list of eligible applicants established by the cadet
8 selection board.

9 (c) Preference in making appointments shall be given
10 whenever possible to honorably discharged members of the

11 armed forces of the United States and to residents of West
12 Virginia. Each applicant for appointment shall be a person not
13 less than twenty-one years of age, of sound constitution and
14 good moral character; shall be required to pass any mental and
15 physical examination and meet other requirements as may be
16 provided for in rules promulgated by the cadet selection board:
17 *Provided*, That a former member may, at the discretion of the
18 superintendent, be reenlisted.

19 (d) No person may be barred from becoming a member of
20 the division because of his or her religious or political convic-
21 tions.

22 (e) The superintendent shall adhere to the principles of
23 equal employment opportunity set forth in article eleven,
24 chapter five of this code, and shall take positive steps to
25 encourage applications for division membership from females
26 and minority groups within the state.

27 (f) Except for the superintendent, no person may be
28 appointed or enlisted to membership in the division at a grade
29 or rank above the grade of trooper.

30 (g) The superintendent shall appoint such civilian employ-
31 ees as may be necessary, and all employees may be included in
32 the classified service of the civil service system except those in
33 positions exempt under the provisions of article six, chapter
34 twenty-nine of this code.

35 (h) Effective the first day of July, two thousand one,
36 civilian employees with a minimum of five years service shall
37 receive a salary increase equal to one hundred dollars a year for
38 each year of service as a civilian employee. Every three years
39 thereafter, civilian employees who have five or more years of
40 service shall receive an annual salary increase of three hundred
41 dollars. The increases in salary provided by this subsection are
42 in addition to any other increases to which the civilian employ-
43 ees might otherwise be entitled.

CHAPTER 264

(Com. Sub. for S. B. 479 — By Senators Tomblin, Mr. President, Anderson, Bailey, Bowman, Chafin, Edgell, Facemyer, Jackson, Love, McCabe, Prezioso, Sharpe, Snyder, Sprouse and Redd)

[Passed April 14, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section five, article twelve-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twelve, article four, chapter twenty-nine of said code; to amend and reenact sections five, nine and fifteen-b, article nineteen of said chapter; to amend and reenact section seven, article two, chapter twenty-nine-a of said code; to amend article one, chapter twenty-nine-c of said code by adding thereto a new section, designated section one hundred seven; to amend and reenact section one hundred eight, article one, chapter thirty-one-b of said code; to amend and reenact section twelve, article four, chapter thirty-three of said code; to amend and reenact section five, article six-c, chapter forty-six-a of said code; to amend and reenact section seventeen, article two, chapter forty-seven of said code; to amend and reenact section one, article ten, chapter forty-seven-b of said code; and to amend and reenact section two, article one, chapter fifty-nine of said code, all relating to fees and charges for services of the secretary of state; the deposit of those fees; and creating an appropriated special revenue account.

Be it enacted by the Legislature of West Virginia:

That section five, article twelve-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be

amended and reenacted; that section twelve, article four, chapter twenty-nine of said code be amended and reenacted; that sections five, nine and fifteen-b, article nineteen of said chapter be amended and reenacted; that section seven, article two, chapter twenty-nine-a of said code be amended and reenacted; that article one, chapter twenty-nine-c of said code be amended by adding thereto a new section, designated section one hundred seven; that section one hundred eight, article one, chapter thirty-one-b of said code be amended and reenacted; that section twelve, article four, chapter thirty-three of said code be amended and reenacted; that section five, article six-c, chapter forty-six-a of said code be amended and reenacted; that section seventeen, article two, chapter forty-seven of said code be amended and reenacted; that section one, article ten, chapter forty-seven-b of said code be amended and reenacted; and that section two, article one, chapter fifty-nine of said code be amended and reenacted, all to read as follows:

Chapter

- 11. Taxation.**
- 29. Miscellaneous Boards and Officers.**
- 29A. State Administrative Procedures Act.**
- 29C. Uniform Notary Act.**
- 31B. Uniform Limited Liability Company Act.**
- 33. Insurance.**
- 46A. West Virginia Consumer Credit and Protection Act.**
- 47. Regulation of Trade.**
- 47B. Uniform Partnership Act.**
- 59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.**

CHAPTER 11. TAXATION.

ARTICLE 12C. CORPORATE LICENSE TAX.

§11-12C-5. Annual fee of secretary of state as attorney-in-fact.

1 Every domestic and foreign corporation and every domestic
2 and foreign limited partnership shall pay an annual fee of
3 twenty-five dollars for the services of the secretary of state as
4 attorney-in-fact for the corporation or limited partnership,
5 which fee is due and payable at the initial registration of the
6 corporation and limited partnership and every year thereafter
7 with the same return, collected by the same officers, and
8 accounted for in the same way as the annual license tax
9 imposed on corporations under this article. The tax commis-
10 sioner shall deposit one half of all attorney-in-fact fees col-
11 lected under this section in the state general revenue fund and
12 one half of the fees in the service fees and collections account
13 established by section two, article one, chapter fifty-nine of this
14 code for the operation of the office of the secretary of state.
15 Any balance of attorney-in-fact fees previously collected by the
16 commissioner on behalf of the secretary of state as provided by
17 chapter two hundred five, acts of the Legislature, regular
18 session, one thousand nine hundred ninety-two, and remaining
19 in the account to which those deposits were made by the
20 commissioner on or before the thirtieth day of June, two
21 thousand one, shall be transferred to the service fees and
22 collections account established by section two, article one,
23 chapter fifty-nine of this code for the operation of the office of
24 the secretary of state. The secretary of state shall dedicate
25 sufficient resources from that fund or other funds to provide the
26 services required in this article.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

Article

4. Notaries Public and Commissioners.

19. Solicitation of Charitable Funds Act.

ARTICLE 4. NOTARIES PUBLIC AND COMMISSIONERS.

§29-4-12. Commissioners out of state; qualifications; fee.

1 The governor, if he or she considers it proper, may appoint
2 any persons residing within or without this state and within the
3 United States, its territories or possessions as commissioners to
4 acknowledge signatures performed in or out of state by persons
5 residing in or out of the state of West Virginia covering deeds,
6 leases and other writings pertaining to West Virginia property
7 for recordation in the state of West Virginia. The commission-
8 ers shall hold office for ten years, unless sooner removed by the
9 governor. Before performing any duties as a commissioner, the
10 commissioner shall enter into a bond in the penalty sum of one
11 thousand dollars with corporate surety to be approved by the
12 secretary of state and filed in his or her office. A fee of one
13 hundred dollars for each commission issued shall be paid to the
14 secretary of state. All fees and moneys collected by the secre-
15 tary of state pursuant to the provisions of this article shall be
16 deposited by the secretary of state as follows: One-half shall be
17 deposited in the state general revenue fund and one-half shall
18 be deposited in the service fees and collections account
19 established by section two, article one, chapter fifty-nine of this
20 code for the operation of the office of the secretary of state. The
21 secretary of state shall dedicate sufficient resources from that
22 fund or other funds to provide the services required in this
23 article.

ARTICLE 19. SOLICITATION OF CHARITABLE FUNDS ACT.

§29-19-5. Registration of charitable organizations; fee.

§29-19-9. Registration of professional fund-raising counsel and professional solicitor;
bonds; records; books.

§29-19-15b. Civil penalty for intentional violations.

§29-19-5. Registration of charitable organizations; fee.

1 (a) Every charitable organization, except as provided in
2 section six of this article, which intends to solicit contributions
3 within this state or to have funds solicited on its behalf shall,
4 prior to any solicitation, file a registration statement with the

5 secretary of state upon forms prescribed by him or her which
6 shall be good for one full year and which shall be refiled in the
7 next and each following year in which the charitable organiza-
8 tion is engaged in solicitation activities. If an organization
9 discontinues solicitation at any time after its last registration
10 filing, then it shall file a registration statement reflecting its
11 activities during its last fiscal year in which solicitation in West
12 Virginia took place. It is the duty of the president, chairman or
13 principal officer of the charitable organization to file the
14 statements required under this article. The statements shall be
15 sworn to and shall contain the following information:

16 (1) The name of the organization and the purpose for which
17 it was organized;

18 (2) The principal address of the organization and the
19 address of any offices in this state. If the organization does not
20 maintain an office, the name and address of the person having
21 custody of its financial records;

22 (3) The names and addresses of any chapters, branches or
23 affiliates in this state;

24 (4) The place where and the date when the organization was
25 legally established and the form of its organization;

26 (5) The names and addresses of the officers, directors,
27 trustees and the principal salaried executive staff officer;

28 (6) A copy of a balance sheet and a statement or report of
29 income and expenses for the organization's immediately
30 preceding fiscal year or a financial statement reporting informa-
31 tion showing the kind and amount of funds raised during the
32 preceding fiscal year, the costs and expenses incidental to the
33 fund raising and showing how the funds were disbursed or
34 allocated for the same fiscal year: *Provided*, That for organiza-
35 tions raising more than fifty thousand dollars per year in

36 contributions, the balance sheet and income and expense
37 statement, or financial statement provided, shall be audited by
38 an independent public accountant. Organizations are required
39 to report the amount of money raised in the state and the
40 amount spent in the state for charitable purposes;

41 (7) A copy of any determination of the organization's tax
42 exempt status under the provisions of 26 U.S.C. §501(c)(3) and
43 a copy of the last filed Internal Revenue Service form 990 and
44 Schedule A for every charitable organization and any parent
45 organization;

46 (8) Whether the organization intends to solicit contributions
47 from the public directly or have other solicitation done on its
48 behalf by others;

49 (9) Whether the organization is authorized by any other
50 governmental authority to solicit contributions and whether it
51 is or has ever been enjoined by any court from soliciting
52 contributions;

53 (10) The general purpose or purposes for which the
54 contributions to be solicited shall be used;

55 (11) The name or names under which it intends to solicit
56 contributions;

57 (12) The names of the individuals or officers of the
58 organization who will have final responsibility for the custody
59 of the contributions;

60 (13) The names of the individuals or officers of the
61 organization responsible for the final distribution of the
62 contributions; and

63 (14) Copies of all contract documentation from professional
64 fund-raising counsels and professional solicitors as provided for
65 in subsection (d), section seven of this article.

66 (b) Each chapter, branch or affiliate, except an independent
67 member agency of a federated fund-raising organization, may
68 separately report the information required by this section or
69 report the information to its parent organization which shall
70 then furnish the information regarding its West Virginia
71 affiliates, chapters and branches in a consolidated form to the
72 secretary of state. An independent member agency of a feder-
73 ated fund-raising organization, as defined in section two of this
74 article, shall comply with the provisions of this article inde-
75 pendently. Each organization shall file a separate registration
76 form for each name under which funds will be solicited.

77 (c) The registration forms and any other documents
78 prescribed by the secretary of state shall be signed by an
79 authorized officer or by an independent public accountant and
80 by the chief fiscal officer of the charitable organization and
81 shall be verified under oath.

82 (d) Every charitable organization collecting less than one
83 million dollars during any year which submits an independent
84 registration to the secretary of state shall pay an annual registra-
85 tion fee of fifteen dollars; every charitable organization
86 collecting more than one million dollars during one year which
87 submits an independent registration to the secretary of state
88 shall pay an annual registration fee of fifty dollars; and a parent
89 organization filing on behalf of one or more chapters, branches
90 or affiliates or a single organization filing under different names
91 shall pay a single annual registration fee of fifty dollars for
92 itself and the chapters, branches or affiliates included in the
93 registration statement. All fees and moneys collected by the
94 secretary of state pursuant to the provisions of this article shall
95 be deposited by the secretary of state as follows: One-half shall

96 be deposited in the state general revenue fund and one-half shall
97 be deposited in the services fees and collections account
98 established by section two, article one, chapter fifty-nine of this
99 code for the operation of the office of the secretary of state. The
100 secretary of state shall dedicate sufficient resources from that
101 fund or other funds to provide the services required in this
102 article.

103 (e) For good cause shown, the secretary of state may extend
104 the due date for the annual filing of a registration statement or
105 report for a period not to exceed ninety days. During that
106 period, the previously filed registration statement or report of
107 the charitable organization which has been granted the exten-
108 sion remains in effect.

109 (f) In addition to the registration fee required by this
110 section, a charitable organization and/or professional fund-
111 raiser, which fails to file a registration statement or report by
112 the original or extended due date for filing as required by this
113 section shall, for each month or part of the month thereafter in
114 which the registration statement or report is not filed, pay an
115 additional fee of twenty-five dollars: *Provided*, That the total
116 amount of the additional fees for a registration statement or
117 report required to be filed in any one year shall not exceed five
118 hundred dollars. All fees and moneys collected by the secretary
119 of state pursuant to the provisions of this article shall be
120 deposited by the secretary of state as follows: One-half shall be
121 deposited in the state general revenue fund and one-half shall
122 be deposited in the service fees and collections account
123 established by section two, article one, chapter fifty-nine of this
124 code for the operation of the office of the secretary of state.
125 Any balance remaining on the thirtieth day of June, two
126 thousand one, in the existing special revenue account entitled
127 "charitable organization fund" as established by chapter thirty-
128 four, acts of the Legislature, regular session, one thousand nine
129 hundred ninety two, shall be transferred to the service fees and

130 collections account established by section two, article one,
131 chapter fifty-nine of this code for the operation of the secretary
132 of state. The secretary of state shall dedicate sufficient re-
133 sources from that fund or other funds to provide the services
134 required in this article.

**§29-19-9. Registration of professional fund-raising counsel and
professional solicitor; bonds; records; books.**

1 (a) No person may act as a professional fund-raising
2 counsel or professional solicitor for a charitable organization
3 subject to the provisions of this article unless he or she has first
4 registered with the secretary of state. Applications for the
5 registration shall be in writing under oath or affirmation in the
6 form prescribed by the secretary of state and contain the
7 information he or she requires. The application for registration
8 by professional fund-raising counsel or professional solicitor
9 shall be accompanied by an annual fee in the sum of one
10 hundred dollars. A partnership or corporation, which is a
11 professional fund-raising counsel or professional solicitor, may
12 register for and pay a single fee on behalf of all its members,
13 officers, agents and employees. However, the names and
14 addresses of all officers, agents and employees of professional
15 fund-raising counsel and all professional solicitors, their
16 officers, agents, servants or employees employed to work under
17 the direction of a professional solicitor shall be listed in the
18 application. All fees and moneys collected by the secretary of
19 state pursuant to the provisions of this article shall be deposited
20 by the secretary of state as follows: One-half shall be deposited
21 in the state general revenue fund and one-half shall be deposited
22 in the service fees and collections account established by
23 section two, article one, chapter fifty-nine of this code for the
24 operation of the office of the secretary of state. The secretary of
25 state shall dedicate sufficient resources from that fund or other
26 funds to provide the services required in this article.

27 (b) The applicant shall, at the time of the making of an
28 application, file with and have approved by the secretary of
29 state a bond in which the applicant shall be the principal obligor
30 in the sum of ten thousand dollars and which shall have one or
31 more sureties satisfactory to the secretary of state whose
32 liability in the aggregate as such sureties will at least equal the
33 said sum and maintain the bond in effect so long as a registra-
34 tion is in effect. The bond shall run to the state for the use of the
35 secretary of state and any person who may have a cause of
36 action against the obligor of the bonds for any losses resulting
37 from malfeasance, nonfeasance or misfeasance in the conduct
38 of solicitation activities. A partnership or corporation which is
39 a professional fund-raising counsel or professional solicitor
40 may file a consolidated bond on behalf of all its members,
41 officers and employees.

42 (c) Each registration is valid throughout the state for a
43 period of one year and may be renewed for additional one-year
44 periods upon written application under oath in the form
45 prescribed by the secretary of state and the payment of the fee
46 prescribed in this section.

47 (d) The secretary of state or his or her designee shall
48 examine each application and if he or she finds it to be in
49 conformity with the requirements of this article and all relevant
50 rules and the registrant has complied with the requirements of
51 this article and all relevant rules, he or she shall approve the
52 registration.

§29-19-15b. Civil penalty for intentional violations.

1 In any action brought pursuant to the provisions of this
2 article, if the court finds that intentional violations have
3 occurred, the state, upon petition to the court and in addition to
4 any damages awarded any party or parties, may recover
5 attorney fees and a civil penalty not exceeding three times the

6 amount collected in that civil action. Of any funds recovered as
7 provided for in this section and any other funds recovered by
8 the state as the result of an award for damages, penalties or
9 settlements in enforcing this article, one-half shall be deposited
10 in the state general revenue fund and one-half shall be deposited
11 in the service fees and collections account established by
12 section two, article one, chapter fifty-nine of this code for the
13 operations of the office of the secretary of state. Any balance
14 remaining on the thirtieth day of June, two thousand one, in the
15 existing special revenue account entitled "charitable organiza-
16 tion fund" as established by chapter thirty-four, acts of the
17 Legislature, regular session, one thousand nine hundred ninety-
18 two, shall be transferred to the service fees and collections
19 account established by section two, article one, chapter fifty-
20 nine of this code for the operation of the office of the secretary
21 of state. The secretary of state shall dedicate sufficient re-
22 sources from that fund or other funds to provide the services
23 required in this article.

CHAPTER 29A. STATE ADMINISTRATIVE PROCEDURES ACT.

ARTICLE 2. STATE REGISTER.

§29A-2-7. Publication of state register.

1 (a) The Legislature intends that the secretary of state offer
2 to the public convenient and efficient access to copies of the
3 state register or parts of the state register desired by the citizens.
4 The provisions of this section are enacted in order to provide a
5 means of doing so pending any other means provided by law or
6 legislative rule.

7 (b) All materials filed in the state register shall be indexed
8 daily in chronological order of filing with a brief description of
9 the item filed and a columnar cross index to: (1) Agency; (2)
10 section, article and chapter of the code to which it relates and

11 by which it is filed in the state register; and (3) any other
12 information in the description or cross index as the secretary of
13 state believes will aid a citizen in using the chronological index.

14 (c) To give users of the code of state rules a means to know
15 whether the rule is being superseded by a version of the rule
16 that has become effective, but not yet been final-filed, prepared,
17 proofed and distributed, or may be superseded by a rule which
18 is being proposed and promulgated pursuant to article three but
19 not yet final, the secretary of state shall provide with each
20 update of the code of state rules, a copy of the rule monitor and
21 its cross index which shows the rules that have become effec-
22 tive but not yet distributed and the rules which may be super-
23 seded by a rule which is being proposed. The copy of the rule
24 monitor distributed with the updates of the code of state rules
25 shall state plainly that this version of the rule monitor only
26 shows the status of the promulgation of rules as of the date of
27 distribution of the update of the code of state rules and that to
28 obtain the most recent status of the rules, the user should
29 consult the rule monitor in the most recent publication of the
30 state register. With the first distribution to the loose-leaf version
31 of the code of state rules, the secretary of state shall also
32 distribute a divider where the current rule monitor shall be
33 maintained. With the first distribution, the secretary of state
34 shall also include instructions, with a copy for insertion in or on
35 the front of each volume of the loose-leaf versions of the code
36 of state rules, to users on how the rule monitor can be used to
37 determine whether the version of the rule in the code of state
38 rules is currently in effect. This subsection is not to be con-
39 strued to require that subscribers to the updates of the code of
40 state rules receive a subscription to the state register.

41 (d) The secretary of state shall cause to be duplicated in
42 such number as is required, on white paper with two punches
43 suitable for fastening in two-ring binders, the permanent
44 biennial state register, the chronological index and other

45 materials filed in the register, or any part by agency or section,
46 article or chapter for subscription at a cost including labor,
47 paper and postage, sufficient in his or her judgment to defray
48 the expense of duplication. The secretary of state shall also
49 offer, at least at monthly intervals, supplements to the published
50 materials listed in this subsection. Any subscription for monthly
51 supplements shall be offered annually and shall include the
52 chronological index and materials related to the agency or
53 agencies, or section, article or chapter of the code as a person
54 may designate. A person may limit the request to notices only,
55 to notices and rules or to notices and proposed rules, or any
56 combination thereof.

57 (e) Every two years, the secretary of state shall offer for
58 purchase succeeding biennial permanent state registers which
59 shall consist of all rules effective on the date of publication
60 selected by the secretary of state, which date shall be at least
61 two years from the last publication date and materials filed in
62 the state register relating to the rules. The cost of the succeed-
63 ing biennial permanent state register and for the portion relating
64 to any agency or any section, article or chapter of the code
65 which may be designated by a person purchasing the same shall
66 be fixed in the same manner specified in section eleven of this
67 article.

68 (f) The secretary of state may omit from any duplication
69 made pursuant to subsection (e) of this section any rules the
70 duplication of which would be unduly cumbersome, expensive
71 or otherwise inexpedient, if a copy of the rules is made avail-
72 able from the original filing of the rule, at a price not exceeding
73 the cost of duplication, and if the volume from which the rule
74 is omitted includes a notice in that portion of the publication in
75 which the rule would have been located, stating: (1) The general
76 subject matter of the omitted rule; (2) each section, article and
77 chapter of this code to which the omitted rule relates; and (3)
78 the means by which a copy of the omitted rule may be obtained.

79 (g) The secretary of state may propose changes to the
80 procedures outlined in subsection (f) of this section by propos-
81 ing a legislative rule under the provisions of section nine, article
82 three of this chapter, but may promulgate no rules containing
83 those changes unless authorized by the Legislature pursuant to
84 article three of this chapter.

85 (h) Beginning the first day of July, two thousand one, one
86 half of the fees and amounts collected for the sale of the state
87 register, the code of state rules and other copies or data pro-
88 vided by the secretary of state shall be deposited in the state
89 general revenue fund and one half of the fees in the service fees
90 and collections account established by section two, article one,
91 chapter fifty-nine of this code for the operations of the office of
92 the secretary of state. Any balance remaining on the thirtieth
93 day of June, two thousand one, in the existing special revenue
94 account entitled "state register" as established by chapter one
95 hundred twenty-one, acts of the Legislature, regular session,
96 one thousand nine hundred eighty-two, shall be transferred to
97 the service fees and collections account established by section
98 two, article one, chapter fifty-nine of this code for the operation
99 of the office of the secretary of state. The secretary of state shall
100 dedicate sufficient resources from that fund or other funds to
101 provide the services required in this article.

CHAPTER 29C. UNIFORM NOTARY ACT.

ARTICLE 1. GENERAL PROVISIONS.

§29C-1-107. Disposition of fees.

1 All fees and moneys collected by the secretary of state
2 pursuant to the provisions of this article shall be deposited by
3 the secretary of state as follows: One-half shall be deposited in
4 the state general revenue fund and one-half shall be deposited
5 in the service fees and collections account established by
6 section two, article one, chapter fifty-nine of this code for the

7 operation of the office of the secretary of state. The secretary of
8 state shall dedicate sufficient resources from that fund or other
9 funds to provide the services required in this article.

CHAPTER 31B. UNIFORM LIMITED LIABILITY COMPANY ACT.

ARTICLE 1. GENERAL PROVISIONS.

§31B-1-108. Designated office and agent for service of process.

1 (a) A limited liability company and a foreign limited
2 liability company authorized to do business in this state shall
3 designate and continuously maintain in this state:

4 (1) An office, which need not be a place of its business in
5 this state; and

6 (2) An agent and street address of the agent for service of
7 process on the company.

8 (b) An agent shall be an individual resident of this state, a
9 domestic corporation, another limited liability company or a
10 foreign corporation or foreign company authorized to do
11 business in this state.

12 (c) Every limited liability company shall pay an annual fee
13 of twenty-five dollars for the services of the secretary of state
14 as attorney-in-fact for the limited liability company, which fee
15 shall be due and payable at the initial registration of the limited
16 liability company and every year thereafter the same time that
17 the annual report required under section two hundred eleven,
18 article two of this chapter is due and one half of each fee shall
19 be deposited in the state fund, general revenue and one half of
20 the fees in the service fees and collections account established
21 by section two, article one, chapter fifty-nine of this code for
22 the operation of the office of the secretary of state. The secre-

23 tary of state shall dedicate sufficient resources from that fund
24 or other funds to provide the services required in this chapter.

25 (d) The secretary of state shall keep a record of all pro-
26 cesses, notices and demands served pursuant to this section and
27 record the time of and the action taken regarding the service.

28 (e) This section does not affect the right to serve process,
29 notice or demand in any manner otherwise provided by law.

CHAPTER 33. INSURANCE.

ARTICLE 4. GENERAL PROVISIONS.

§33-4-12. Service of process on licensed insurers.

1 The secretary of state shall be, and is hereby constituted,
2 the attorney-in-fact of every licensed insurer, domestic, foreign
3 or alien, transacting insurance in this state, upon whom all legal
4 process in any action, suit or proceeding against it shall be
5 served and he or she may accept service of the process. The
6 process shall be served upon the secretary of state, or accepted
7 by him or her, in the same manner as provided for service of
8 process upon unlicensed insurers under subdivisions (2) and
9 (3), subsection (b), section thirteen of this article. Each licensed
10 insurer shall pay to the secretary of state an annual fee of
11 twenty-five dollars for services as authorized agent for service
12 of process, one half of which shall be deposited in the state
13 fund, general revenue and one half of the fees in the service
14 fees and collections account established by section two, article
15 one, chapter fifty-nine of this code for the operation of the
16 office of the secretary of state.

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

ARTICLE 6C. CREDIT SERVICES ORGANIZATIONS.

§46A-6C-5. Registration.

1 (a) A credit services organization shall file a registration
2 statement with the secretary of state before conducting business
3 in this state. The registration statement shall contain:

4 (1) The name and address of the credit services organiza-
5 tion; and

6 (2) The name and address of any person who directly or
7 indirectly owns or controls ten percent or more of the outstand-
8 ing shares of stock in the credit services organization.

9 (b) The registration statement shall also contain either:

10 (1) A full and complete disclosure of any litigation or
11 unresolved complaint filed with a governmental authority of
12 this state relating to the operation of the credit services organi-
13 zation; or

14 (2) A notarized statement that states that there has been no
15 litigation or unresolved complaint filed with a governmental
16 authority of this state relating to the operation of the credit
17 services organization.

18 (c) The credit services organization shall update the
19 statement not later than the ninetieth day after the date on which
20 a change in the information required in the statement occurs.

21 (d) Each credit services organization registering under this
22 section shall maintain a copy of the registration statement in the
23 files of the credit services organization. The credit services
24 organization shall allow a buyer to inspect the registration
25 statement on request.

26 (e) The secretary of state may charge each credit services
27 organization that files a registration statement with the secretary

28 of state a reasonable fee not to exceed one hundred dollars to
29 cover the cost of filing. The secretary of state may not require
30 a credit services organization to provide information other than
31 that provided in the registration statement. All fees and moneys
32 collected by the secretary of state pursuant to the provisions of
33 this article shall be deposited by the secretary of state as
34 follows: One-half shall be deposited in the state fund, general
35 revenue and one-half shall be deposited in the service fees and
36 collections account established by section two, article one,
37 chapter fifty-nine of this code for the operation of the office of
38 the secretary of state. The secretary of state shall dedicate
39 sufficient resources from that fund or other funds to provide the
40 services required in this article.

41 (f) The bond or surety account shall be maintained until two
42 years after the date that the credit services organization ceases
43 operations.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 2. TRADEMARKS IN GENERAL.

§47-2-17. Fees.

1 (a) The secretary shall charge the following fees for
2 services provided pursuant to the provisions of this article:

3 (1) For an application fee and for a renewal fee, fifty
4 dollars; and

5 (2) For recording any instrument specified in section seven
6 of this article, twenty-five dollars.

7 (b) One half of each fee shall be deposited in the state fund,
8 general revenue and one half of the fee shall be deposited in the
9 service fees and collections account established by section two,
10 article one, chapter fifty-nine of this code for the operation of

11 the office of the secretary of state. Any balance remaining on
12 the thirtieth day of June, two thousand one, in the existing
13 special revenue account entitled "trademarks" as established by
14 chapter two hundred forty-nine, acts of the Legislature, regular
15 session, one thousand nine hundred ninety-six, shall be trans-
16 ferred to the service fees and collections account established by
17 section two, article one, chapter fifty-nine of this code for the
18 operation of the office of the secretary of state. The secretary of
19 state shall dedicate sufficient resources from that fund or other
20 funds to provide the services required in this article.

CHAPTER 47B. UNIFORM PARTNERSHIP ACT.

ARTICLE 10. LIMITED LIABILITY PARTNERSHIPS.

§47B-10-1. Registered limited liability partnerships.

1 (a) To become a registered limited liability partnership, a
2 partnership shall file with the secretary of state a statement of
3 registration stating the name of the partnership; the address of
4 its principal office; if the partnership's principal office is not
5 located in this state, the address of a registered office and the
6 name and address of a registered agent for service of process in
7 this state, which the partnership will be required to maintain; a
8 brief statement of the business in which the partnership
9 engages; any other matters that the partnership determines to
10 include; and that the partnership thereby registers as a regis-
11 tered limited liability partnership.

12 (b) The registration shall be executed by one or more
13 partners authorized to execute a registration.

14 (c) The registration shall be accompanied by a fee of two
15 hundred fifty dollars.

16 (d) The secretary of state shall register as a registered
17 limited liability partnership any partnership that submits a
18 completed registration with the required fee.

19 (e) A partnership registered under this section shall pay, in
20 each year following the year in which its registration is filed, on
21 a date specified by the secretary of state, an annual fee of five
22 hundred dollars. The fee shall be accompanied by a notice, on
23 a form provided by the secretary of state, of any material
24 changes in the information contained in the partnership's
25 registration.

26 (f) Registration is effective:

27 (1) Immediately after the date a registration is filed; or

28 (2) On a date specified in the statement of registration,
29 which date shall not be more than sixty days after the date of
30 filing.

31 (g) Registration remains effective until:

32 (1) It is voluntarily withdrawn by filing with the secretary
33 of state a statement of withdrawal; or

34 (2) Thirty days after receipt by the partnership of a notice
35 from the secretary of state, which shall be sent by certified mail,
36 return receipt requested, that the partnership has failed to make
37 timely payment of the annual fee specified in subsection (e) of
38 this section, unless the fee is paid within a thirty-day period.

39 (h) The status of a partnership as a registered limited
40 liability partnership and the liability of the partners thereof shall
41 not be affected by:

42 (1) Errors in the information contained in a statement of
43 registration under subsection (a) of this section or notice under
44 subsection (e) of this section; or

45 (2) Changes after the filing of the statement of registration
46 or notice in the information stated in the registration or notice.

47 (i) The secretary of state shall provide forms for the
48 statement of registration under subsection (a) of this section or
49 a notice under subsection (e) of this section.

50 (j) All fees and moneys collected by the secretary of state
51 pursuant to the provisions of this article shall be deposited by
52 the secretary of state as follows: One-half shall be deposited in
53 the state general revenue fund and one-half shall be deposited
54 in the service fees and collections account established by
55 section two, article one, chapter fifty-nine of this code for the
56 operation of the office of the secretary of state. The secretary of
57 state shall dedicate sufficient resources from that fund or other
58 funds to provide the services required in this article.

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

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-2. Fees to be charged by secretary of state.

1 (a) Except as may be otherwise provided in this code, the
2 secretary of state shall charge for services rendered in his or her
3 office the following fees to be paid by the person to whom the
4 service is rendered at the time it is done:

5 (1) For filing, recording, indexing, preserving a record of
6 and issuing a certificate relating to the formation, amendment,
7 change of name, registration of trade name, merger, consolida-
8 tion, conversion, renewal, dissolution, termination, cancellation,
9 withdrawal revocation and reinstatement of business entities
10 organized within the state, as follows:

11 (A) Articles of incorporation of for-profit

12 corporation \$50.00

13 (B) Articles of incorporation of nonprofit corporation . 25.00

14 (C) Agreement of a general partnership 50.00

15 (D) Certificate of a limited partnership 100.00

16 (E) Agreement of a voluntary association 50.00

17 (F) Articles of organization of a business trust 50.00

18 (G) Amendment or correction of articles of incorporation,
19 including change of name or increase of capital stock, in addition
20 to any applicable license tax 25.00

21 (H) Amendment or correction, including change of name, of
22 articles of organization of business trust, limited liability
23 partnership, limited liability company or professional limited
24 liability company or of certificate of limited partnership or
25 agreement of voluntary association 25.00

26 (I) Amendment and restatement of articles of incorporation,
27 certificate of limited partnership, agreement of voluntary
28 association or articles of organization of limited liability
29 partnership, limited liability company or professional limited
30 liability company or business trust 25.00

31 (J) Registration of trade name, otherwise designated as a true
32 name, fictitious name or D.B.A. (doing business as) name for
33 any domestic business entity as permitted by law 25.00

34 (K) Articles of merger of two corporations, limited partner-
35 ships, limited liability partnerships, limited liability companies
36 or professional limited liability companies, voluntary associa-
37 tions or business trusts. 25.00

38 (L) Plus for each additional party to the merger in excess of
39 two. 15.00

40 (M) Statement of conversion, when permitted, from one
41 business entity into another business entity, in addition to the
42 cost of filing the appropriate documents to organize the surviv-
43 ing entity 25.00

44 (N) Articles of dissolution of a corporation, voluntary
45 association or business trust, or statement of dissolution of a
46 general partnership 25.00

47 (O) Revocation of voluntary dissolution of a corporation,
48 voluntary association or business trust 15.00

49 (P) Articles of termination of a limited liability company,
50 cancellation of a limited partnership or statement of withdrawal
51 of limited liability partnership 25.00

52 (Q) Reinstatement of a limited liability company or profes-
53 sional limited liability company after administrative
54 dissolution 25.00

55 (2) For filing, recording, indexing, preserving a record of
56 and issuing a certificate relating to the registration, amendment,
57 change of name, merger, consolidation, conversion, renewal,
58 withdrawal or termination within this state of business entities
59 organized in other states or countries, as follows:

60 (A) Certificate of authority of for-profit
61 corporation \$100.00

62 (B) Certificate of authority of nonprofit
63 corporation 50.00

64 (C) Certificate of exemption from certificate of
65 authority 25.00

66	(D) Registration of a general partnership	50.00
67	(E) Registration of a limited partnership	150.00
68	(F) Registration of a limited liability partnership for two-	
69	year term	500.00
70	(G) Registration of a voluntary association	50.00
71	(H) Registration of a trust or business trust	50.00
72	(I) Amendment or correction of certificate of authority of a	
73	foreign corporation, including change of name or increase of	
74	capital stock, in addition to any applicable license tax .	25.00
75	(J) Amendment or correction of certificate of limited	
76	partnership, limited liability partnership, limited liability	
77	company or professional limited liability company, voluntary	
78	association or business trust	25.00
79	(K) Registration of trade name, otherwise designated as a	
80	true name, fictitious name or D.B.A. (doing business as) name	
81	for any foreign business entity as permitted by law . . .	25.00
82	(L) Amendment and restatement of certificate of authority	
83	or of registration of a corporation, limited partnership, limited	
84	liability partnership, limited liability company or professional	
85	limited liability company, voluntary association or business	
86	trust	25.00
87	(M) Articles of merger of two corporations, limited partner-	
88	ships, limited liability partnerships, limited liability companies	
89	or professional limited liability companies, voluntary associa-	
90	tions or business trusts	25.00
91	(N) Plus for each additional party to the merger in excess of	
92	two	5.00

- 93 (O) Statement of conversion, when permitted, from one
94 business entity into another business entity, in addition to the
95 cost of filing the appropriate articles or certificate to organize the
96 surviving entity 25.00
- 97 (P) Certificate of withdrawal or cancellation of a corpora-
98 tion, limited partnership, limited liability partnership, limited
99 liability company, voluntary association or business trust 25.00
- 100 (3) For receiving, filing and recording a change of the
101 principal or designated office, change of the agent of process
102 and/or change of officers, directors, partners, members or
103 managers, as the case may be, of a corporation, limited partner-
104 ship, limited liability partnership, limited liability company or
105 other business entity as provided by law 15.00
- 106 (4) For receiving, filing and preserving a reservation of a
107 name for each one hundred twenty days or for any other period
108 in excess of seven days prescribed by law for a corporation,
109 limited partnership, limited liability partnership or limited
110 liability company 15.00
- 111 (5) For issuing a certificate relating to a corporation or other
112 business entity, as follows:
- 113 (A) Certificate of good standing of a domestic or foreign
114 corporation \$10.00
- 115 (B) Certificate of existence of a domestic limited liability
116 company, and certificate of authorization foreign limited liability
117 company 10.00
- 118 (C) Certificate of existence of any business entity, trademark
119 or service mark registered with the secretary of
120 state 10.00

- 121 (D) Certified copy of corporate charter or comparable
122 organizing documents for other business entities 15.00
- 123 (E) Plus, for each additional amendment, restatement or
124 other additional document 5.00
- 125 (F) Certificate of registration of the name of a foreign
126 corporation, limited liability company, limited partnership or
127 limited liability partnership 25.00
- 128 (G) And for the annual renewal of the name
129 registration 10.00
- 130 (H) Any other certificate not herein specified 10.00
- 131 (6) For issuing a certificate other than those relating to
132 business entities, as provided in this subsection, as follows:
- 133 (A) Certificate or apostille relating to the authority of certain
134 public officers, including the membership of boards and com-
135 missions \$10.00
- 136 (B) Plus, for each additional certificate pertaining to the
137 same transaction 5.00
- 138 (C) Any other certificate not herein specified 10.00
- 139 (D) For acceptance, indexing and recordation of service of
140 process any corporation, limited partnership, limited liability
141 partnership, limited liability company, voluntary association,
142 business trust, insurance company, person or other entity as
143 permitted by law 15.00
- 144 (E) For shipping and handling expenses for execution of
145 service of process by certified mail upon any defendant within
146 the United States, which fee is to be deposited to the special
147 revenue account established in this section for the operation of
148 the office of the secretary of state. 5.00

149 (F) For shipping and handling expenses for execution of
 150 service of process upon any defendant outside the United States
 151 by registered mail, which fee is to be deposited to the special
 152 revenue account established in this section for the operation of
 153 the office of the secretary of state. 15.00

154 (7) For a search of records of the office conducted by
 155 employees of or at the expense of the secretary of state upon
 156 request, as follows:

157 (A) For any search of archival records maintained at sites
 158 other than the office of the secretary of state, no less
 159 than \$10.00

160 (B) For searches of archival records maintained at sites other
 161 than the office of the secretary of state which require more than
 162 one hour, for each hour or fraction thereof consumed in making
 163 such search 10.00

164 (C) For any search of records maintained on site for the
 165 purpose of obtaining copies of documents or printouts of
 166 data 5.00

167 (D) For any search of records maintained in electronic
 168 format which requires special programming to be performed by
 169 the state information services agency or other vendor, any actual
 170 cost, but not less than 25.00

171 (E) The cost of the search shall be in addition to the cost of
 172 any copies or printouts prepared or any certificate issued
 173 pursuant thereto or based thereon.

174 (F) For recording any paper for which no specific fee is
 175 prescribed 5.00

176 (8) For producing and providing photocopies or printouts of
 177 electronic data of specific records upon request, as follows:

178 (A) For a copy of any paper or printout of electronic data, if
179 one sheet \$1.00

180 (B) For each sheet after the first50

181 (C) For sending the copies or lists by fax transmission . 5.00

182 (D) For producing and providing photocopies of lists,
183 reports, guidelines and other documents produced in multiple
184 copies for general public use, a publication price to be estab-
185 lished by the secretary of state at a rate approximating 2.00 plus
186 .10 per page and rounded to the nearest dollar.

187 (E) For electronic copies of records obtained in data format
188 on disk, the cost of the record in the least expensive available
189 printed format, plus, for each required disk, which shall be
190 provided by the secretary of state 5.00

191 (b) The secretary of state may promulgate legislative rules
192 for charges for on-line electronic access to database information
193 or other information maintained by the secretary of state.

194 (c) For any other work or service not enumerated in this
195 subsection, the fee prescribed elsewhere in this code or a rule
196 promulgated under the authority of this code.

197 (d) The records maintained by the secretary of state are
198 prepared and indexed at the expense of the state and those
199 records shall not be obtained for commercial resale without the
200 written agreement of the state to a contract including reimburse-
201 ment to the state for each instance of resale.

202 (e) The secretary of state may provide printed or electronic
203 information free of charge as he or she considers necessary and
204 efficient for the purpose of informing the general public or the
205 news media.

206 (f) There is hereby established in the state treasury a special
207 revenue account to be known as the "service fees and collec-
208 tions" account. Expenditures from the account shall be used for
209 the operation of the office of the secretary of state and are not
210 authorized from collections, but are to be made only in accor-
211 dance with appropriation by the Legislature and in accordance
212 with the provisions of article three, chapter twelve of this code
213 and upon the fulfillment of the provisions set forth in article
214 two, chapter five-a of this code. Notwithstanding any other
215 provision of this code, one half of all the fees and service
216 charges established in the following sections and for the
217 following purposes shall be deposited by the secretary of state
218 or other collecting agency to that special revenue account and
219 used for the operation of the office of the secretary of state;

220 (1) The annual attorney-in-fact fee for corporations and
221 limited partnerships established in section five, article twelve-c,
222 chapter eleven of this code;

223 (2) The fees received for the sale of the state register, code
224 of state rules and other copies established by rule and autho-
225 rized by section seven, article two, chapter twenty-nine-a of this
226 code;

227 (3) The registration fees, late fees and legal settlements
228 charged for registration and enforcement of the charitable
229 organizations and professional solicitations established in
230 sections five, nine and fifteen-b, article nineteen, chapter
231 twenty-nine of this code;

232 (4) The annual attorney-in-fact fee for limited liability
233 companies as designated in section one hundred eight, article
234 one, chapter thirty-one-b of this code and established in section
235 two hundred eleven, article two of said chapter;

236 (5) The filing fees and search and copying fees for uniform
237 commercial code transactions established by section five
238 hundred twenty-five, article nine, chapter forty-six of this code;

239 (6) The annual attorney-in-fact fee for licensed insurers
240 established in section twelve, article four, chapter thirty-three
241 of this code;

242 (7) The fees for the application and record maintenance of
243 all notaries public established by section one hundred seven,
244 article one, chapter twenty-nine-c of this code;

245 (8) The fees for the application and record maintenance of
246 commissioners for West Virginia as established by section
247 twelve, article four, chapter twenty-nine of this code;

248 (9) The fees for registering credit service organizations as
249 established by section five, article six-c, chapter forty-six-a of
250 this code;

251 (10) The fees for registering and renewing a West Virginia
252 limited liability partnership as established by section one,
253 article ten, chapter forty-seven-b of this code;

254 (11) The filing fees for the registration and renewal of
255 trademarks and service marks established in section seventeen,
256 article two, chapter forty-seven of this code;

257 (12) All fees for services, the sale of photocopies and data
258 maintained at the expense of the secretary of state as provided
259 in this section; and

260 (13) All registration, license and other fees collected by the
261 secretary of state not specified in this section.

262 (g) Any balance in the service fees and collections account
263 established by this section which exceeds five hundred thou-
264 sand dollars as of the thirtieth day of June, two thousand three,
265 and each year thereafter, shall be expired to the state fund,
266 general revenue fund.

CHAPTER 265

(S. B. 478 — By Senators Tomblin, Mr. President, Anderson, Bailey, Bowman, Chafin, Edgell, Facemyer, Jackson, Love, McCabe, Prezioso, Sharpe, Snyder and Sprouse)

[Passed April 13, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five hundred twenty-five, article nine, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, as contained in chapter two hundred seventy-two, acts of the Legislature, regular session, two thousand, relating to the deposit of fees to be charged by the secretary of state.

Be it enacted by the Legislature of West Virginia:

That section five hundred twenty-five, article nine, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, as contained in chapter two hundred seventy-two, acts of the Legislature of West Virginia, regular session, two thousand, be amended and reenacted to read as follows:

ARTICLE 9. SECURED TRANSACTIONS.

*§46-9-525. Fees.

- 1 (a) *Initial financing statement or other record: general rule.*
- 2 — Except as otherwise provided in subsection (e) of this
- 3 section, the fee for filing and indexing a record under this part,
- 4 other than an initial financing statement of the kind described
- 5 in subsection (b) of this section, is the amount specified in
- 6 subsection (c) of this section, if applicable, plus:

***Clerk's Note:** This section was also amended by S. B. 732 (Chapter 306), which passed subsequent to this act.

7 (1) Ten dollars if the record is communicated in writing and
8 consists of one or two pages;

9 (2) Ten dollars if the record is communicated in writing and
10 consists of more than two pages; and

11 (3) Ten dollars if the record is communicated by another
12 medium authorized by filing-office rule.

13 (b) *Initial financing statement: Public-finance and manu-*
14 *factured housing transactions.* -- Except as otherwise provided
15 in subsection (e) of this section, the fee for filing and indexing
16 an initial financing statement of the kind is the amount speci-
17 fied in subsection (c) of this section, if applicable, plus:

18 (1) Ten dollars if the financing statement indicates that it is
19 filed in connection with a public-finance transaction; and

20 (2) Ten dollars if the financing statement indicates that it is
21 filed in connection with a manufactured-home transaction.

22 (c) *Number of names.* -- The number of names required to
23 be indexed does not affect the amount of the fee in subsections
24 (a) and (b) of this section.

25 (d) *Response to information request.* -- The fee for re-
26 sponding to a request for information from the filing office,
27 including for issuing a certificate showing whether there is on
28 file any financing statement naming a particular debtor, is:

29 (1) Five dollars if the request is communicated in writing;

30 (2) Five dollars if the request is communicated by another
31 medium authorized by filing-office rule; and

32 (3) Fifty cents per page for each active lien.

33 (e) *Record of mortgage.* — This section does not require a
34 fee with respect to a record of a mortgage which is effective as
35 a financing statement filed as a fixture filing or as a financing
36 statement covering as-extracted collateral or timber to be cut
37 under section 9-502(c). However, the recording and satisfaction
38 fees that otherwise would be applicable to the record of the
39 mortgage apply.

40 (f) *Deposit of funds.* — All fees and moneys collected by
41 the secretary of state pursuant to the provisions of this article
42 shall be deposited by the secretary of state as follows: One-half
43 shall be deposited in the state fund, general revenue, and one-
44 half shall be deposited in the service fees and collections
45 account established by section two, article one, chapter fifty-
46 nine of this code for the operation of the office of the secretary
47 of state. Any balance remaining on the thirtieth day of June,
48 two thousand one, in the existing special revenue account
49 entitled “uniform commercial code” as established by chapter
50 two hundred four, acts of the Legislature, regular session one
51 thousand nine hundred eighty-nine, shall be transferred to the
52 service fees and collections account established by section two,
53 article one, chapter fifty-nine of this code for the operation of
54 the office of the secretary of state. The secretary of state shall
55 dedicate sufficient resources from that fund or other funds to
56 provide the services required in this article.

CHAPTER 266

(H. B. 2409 — By Delegates Staton, Stemple, Varner and Beane)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and five, article twelve, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the sex offender registry; clarifying use of information regarding the identity of victims; requiring registrants to provide information about their internet accounts and screen names; and excluding certain information from dissemination under certain circumstances.

Be it enacted by the Legislature of West Virginia:

That sections two and five, article twelve, 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 12. SEX OFFENDER REGISTRATION ACT.

§15-12-2. Registration.

§15-12-5. Distribution and disclosure of information; community information programs by prosecuting attorney and state police; petition to circuit court.

§15-12-2. Registration.

1 (a) The provisions of this article apply both retroactively
2 and prospectively.

3 (b) Any person who has been convicted of an offense or an
4 attempted offense or has been found not guilty by reason of
5 mental illness, mental retardation or addiction of an offense
6 under any of the following provisions of chapter sixty-one of
7 this code or under a statutory provision of another state, the
8 United States code or the uniform code of military justice which
9 requires proof of the same essential elements shall register as
10 set forth in subsection (d) of this section and according to the
11 internal management rules promulgated by the superintendent
12 under authority of section twenty-five, article two of this
13 chapter:

14 (1) Article eight-b, including the provisions of former
15 section six of said article, relating to the offense of sexual
16 assault of a spouse, which was repealed by an act of the
17 Legislature during the year two thousand legislative session;

18 (2) Article eight-c;

19 (3) Sections five and six, article eight-d;

20 (4) Section fourteen, article two; or

21 (5) Sections six, seven, twelve and thirteen, article eight.

22 (c) Any person who has been convicted of a criminal
23 offense, and the sentencing judge made a written finding that
24 the offense was sexually motivated shall also register as set
25 forth in this article.

26 (d) Persons required to register under the provisions of this
27 article shall provide or cooperate in providing, at a minimum,
28 the following when registering:

29 (1) The full name of the registrant, including any aliases,
30 nicknames or other names used by the registrant;

31 (2) The address where the registrant intends to reside or
32 resides at the time of registration, the name and address of the
33 registrant's employer or place of occupation at the time of
34 registration, the names and addresses of any anticipated future
35 employers or places of occupation, the name and address of any
36 school or training facility the registrant is attending at the time
37 of registration and the names and addresses of any schools or
38 training facilities the registrant expects to attend;

39 (3) The registrant's social security number;

40 (4) A full-face photograph of the registrant at the time of
41 registration;

42 (5) A brief description of the crime or crimes for which the
43 registrant was convicted;

44 (6) Fingerprints; and

45 (7) Information relating to any internet accounts the
46 registrant has and the screen names, user names or aliases the
47 registrant uses on the internet.

48 (e) On the date that any person convicted or found not
49 guilty by reason of mental illness, mental retardation or
50 addiction of any of the crimes listed in subsection (b) of this
51 section, including those persons who are continuing under some
52 post-conviction supervisory status, are released, granted
53 probation or a suspended sentence, released on parole, proba-
54 tion, home detention, work release, conditional release or any
55 other release from confinement, the commissioner of correc-
56 tions, regional jail administrator, city or sheriff operating a jail,
57 or secretary of the department of health and human resources
58 which releases the person, and any parole or probation officer
59 who releases the person or supervises the person following the
60 release, shall obtain all information required by subsection (d)
61 of this section prior to the release of the person, inform the
62 person of his or her duty to register and send written notice of
63 the release of the person to the state police within three days of
64 receiving the information. The notice must include the informa-
65 tion required by subsection (d) of this section.

66 (f) For any person determined to be a sexually violent
67 predator, the notice required by subsection (d) of this section
68 must also include:

69 (1) Identifying factors, including physical characteristics;

70 (2) History of the offense; and

71 (3) Documentation of any treatment received for the mental
72 abnormality or personality disorder.

73 (g) At the time the person is convicted or found not guilty
74 by reason of mental illness, mental retardation or addiction in
75 a court of this state of the crimes set forth in subsection (b) of
76 this section, the person shall sign in open court a statement
77 acknowledging that he or she understands the requirements
78 imposed by this article. The court shall inform the person so
79 convicted of the requirements to register imposed by this article
80 and shall further satisfy itself by interrogation of the defendant
81 or his or her counsel that the defendant has received notice of
82 the provisions of this article and that the defendant understands
83 the provisions. The statement, when signed and witnessed,
84 constitutes prima facie evidence that the person had knowledge
85 of the requirements of this article. Persons who have not signed
86 a statement under the provisions of this subsection and who are
87 subject to the registration requirements of this article must be
88 informed of the requirement by the state police whenever the
89 state police obtain information that the person is subject to
90 registration requirements.

91 (h) The state police shall maintain a central registry of all
92 persons who register under this article and shall release
93 information only as provided in this article. The information
94 required to be made public by the state police by subdivision
95 (2), subsection (b), section five of this article is to be accessible
96 through the internet. No information relating to internet
97 accounts, screen names, user names or aliases a registrant has
98 or uses may be released through the internet.

99 (i) For the purpose of this article, “sexually violent offense”
100 means:

101 (1) Sexual assault in the first degree as set forth in section
102 three, article eight-b, chapter sixty-one of this code, or of a

103 similar provision in another state, federal or military jurisdic-
104 tion;

105 (2) Sexual assault in the second degree as set forth in
106 section four, article eight-b, chapter sixty-one of this code, or of
107 a similar provision in another state, federal or military jurisdic-
108 tion;

109 (3) Sexual assault of a spouse as set forth in the former
110 provisions of section six, article eight-b, chapter sixty-one of
111 this code which was repealed by an act of the Legislature during
112 the two thousand legislative session, or of a similar provision in
113 another state, federal or military jurisdiction;

114 (4) Sexual abuse in the first degree as set forth in section
115 seven, article eight-b, chapter sixty-one of this code, or of a
116 similar provision in another state, federal or military jurisdic-
117 tion.

118 (j) For purposes of this article, the term “sexually moti-
119 vated” means that one of the purposes for which a person
120 committed the crime was for any person’s sexual gratification.

121 (k) For purposes of this article, the term “sexually violent
122 predator” means a person who has been convicted or found not
123 guilty by reason of mental illness, mental retardation or
124 addiction of a sexually violent offense and who suffers from a
125 mental abnormality or personality disorder that makes the
126 person likely to engage in predatory sexually violent offenses.

127 (l) For purposes of this article, the term “mental abnormal-
128 ity” means a congenital or acquired condition of a person that
129 affects the emotional or volitional capacity of the person in a
130 manner that predisposes that person to the commission of
131 criminal sexual acts to a degree that makes the person a menace
132 to the health and safety of other persons.

133 (m) For purposes of this article, the term “predatory act”
134 means an act directed at a stranger or at a person with whom a
135 relationship has been established or promoted for the primary
136 purpose of victimization.

**§15-12-5. Distribution and disclosure of information; community
information programs by prosecuting attorney and
state police; petition to circuit court.**

1 (a) Within five working days after receiving any notifica-
2 tion as described in this article, the state police shall distribute
3 a copy of the notification statement to:

4 (1) The supervisor of each county and municipal
5 law-enforcement office and any campus police department in
6 the city and county where the registrant resides, is employed or
7 attends school or a training facility;

8 (2) The county superintendent of schools where the
9 registrant resides, is employed or attends school or a training
10 facility;

11 (3) The child protective services office charged with
12 investigating allegations of child abuse or neglect in the county
13 where the registrant resides, is employed or attends school or a
14 training facility;

15 (4) All community organizations or religious organizations
16 which regularly provide services to youths in the county where
17 the registrant resides, is employed or attends school or a
18 training facility;

19 (5) Individuals and organizations which provide day care
20 services for youths or day care, residential or respite care, or
21 other supportive services for mentally or physically incapacitated
22 or infirm persons in the county where the registrant
23 resides, is employed or attends school or a training facility; and

24 (6) The federal bureau of investigation (FBI).

25 (b) Information concerning persons whose names are
26 contained in the sexual offender registry and who are not
27 required to register for life is to be disseminated only in the
28 following manner and shall not be subject to the requirements
29 of the West Virginia freedom of information act, as set forth in
30 chapter twenty-nine-b of this code:

31 (1) When a person has been determined to be a sexually
32 violent predator under the terms of section two-a of this article,
33 the state police shall notify the prosecuting attorney of the
34 county in which the person resides, is employed or attends a
35 school or training facility. The prosecuting attorney shall
36 cooperate with the state police in conducting a community
37 notification program which is to include publication of the
38 offender's name, photograph, place of residence, employment
39 and education or training, as well as information concerning the
40 legal rights and obligations of both the offender and the
41 community. Information relating to the victim of an offense
42 requiring registration may not be released to the public except
43 to the extent the prosecuting attorney and the state police
44 consider it necessary to best educate the public as to the nature
45 of sexual offenses: *Provided*, That no victim's name may be
46 released in any public notification pursuant to this subsection.
47 No information relating to internet accounts, screen names, user
48 names or aliases a registrant has or uses may be released to the
49 public with this notification program. The prosecuting attorney
50 and state police may conduct a community notification program
51 in the county of residence, employment or where a person is
52 attending school or a training facility of any person who is
53 required to register for life under the terms of subdivision (2),
54 subsection (a), section four of this article. Community notifica-
55 tion may be repeated when determined to be appropriate by the
56 prosecuting attorney;

57 (2) The state police shall maintain and make available to
58 the public at least quarterly the list of all persons who are
59 required to register for life according to the terms of subdivi-
60 sion (2), subsection (a), section four of this article. No informa-
61 tion concerning the identity of a victim of an offense requiring
62 registration or information relating to internet accounts, screen
63 names, user names or aliases a registrant has or uses may be
64 released with this list. The method of publication and access to
65 this list are to be determined by the superintendent; and

66 (3) A resident of a county may petition the circuit court for
67 an order requiring the state police to release information about
68 persons residing in that county who are required to register
69 under section two of this article. The court shall determine
70 whether information contained on the list is relevant to public
71 safety and whether its relevance outweighs the importance of
72 confidentiality. If the court orders information to be released,
73 it may further order limitations upon secondary dissemination
74 by the resident seeking the information. In no event may
75 information concerning the identity of a victim of an offense
76 requiring registration or information relating to internet
77 accounts, screen names, user names or aliases a registrant has
78 or uses be released.

79 (c) The state police may furnish information and documen-
80 tation required in connection with the registration to authorized
81 law-enforcement, campus police and governmental agencies of
82 the United States and its territories, of foreign countries duly
83 authorized to receive the same, of other states within the United
84 States and of the state of West Virginia upon proper request
85 stating that the records will be used solely for law enforce-
86 ment-related purposes. The state police may disclose informa-
87 tion collected under this article to federal, state and local

88 governmental agencies responsible for conducting preemploy-
89 ment checks.

90 (d) An elected public official, public employee or public
91 agency is immune from civil liability for damages arising out
92 of any action relating to the provisions of this section except
93 when the official, employee or agency acted with gross negli-
94 gence or in bad faith.

CHAPTER 267

**(S. B. 157 — By Senators Hunter, Mitchell, Caldwell,
Kessler, Ross, Oliverio and Rowe)**

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article one, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing a definition of social worker.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DEFINITIONS; LIMITATIONS OF CHAPTER; GOALS FOR EDUCATION.

§18-1-1. Definitions.

1 The following words used in this chapter and in any
2 proceedings pursuant thereto shall, unless the context clearly
3 indicates a different meaning, be construed as follows:

4 (a) “School” means the pupils and teacher or teachers
5 assembled in one or more buildings, organized as a unit;

6 (b) “District” means county school district;

7 (c) “State board” means the West Virginia board of
8 education;

9 (d) “Board” means the county board of education;

10 (e) “State superintendent” means the state superintendent
11 of free schools;

12 (f) “Superintendent” means the county superintendent of
13 schools;

14 (g) “Teacher” means teacher, supervisor, principal, superin-
15 tendent or public school librarian; registered professional nurse,
16 licensed by the West Virginia board of examiners for registered
17 professional nurses and employed by a county board of educa-
18 tion, who has a baccalaureate degree; or any other person
19 regularly employed for instructional purposes in a public school
20 in this state;

21 (h) “Service personnel” means all nonteaching school
22 employees not included in the above definition of “teacher”;

23 (i) “Social worker” means a nonteaching school employee
24 who, at a minimum, possesses an undergraduate degree in
25 social work from an accredited institution of higher learning
26 and who provides various professional social work services,
27 activities or methods as defined by the state board for the
28 benefit of students;

29 (j) "Regular full-time employee" means any person
30 employed by a county board of education who has a regular
31 position or job throughout his or her employment term, without
32 regard to hours or method of pay;

33 (k) "Career clusters" means broad groupings of related
34 occupations;

35 (l) "Work-based learning" means a structured activity that
36 correlates with and is mutually supportive of the school-based
37 learning of the student and includes specific objectives to be
38 learned by the student as a result of the activity;

39 (m) "School-age juvenile" means any individual who is
40 entitled to attend or who, if not placed in a residential facility,
41 would be entitled to attend public schools in accordance with:
42 (1) Section five, article two of this chapter; (2) sections fifteen
43 and eighteen, article five of this chapter; or (3) section one,
44 article twenty of this chapter;

45 (n) "Student with a disability" means an exceptional child,
46 other than gifted, pursuant to section one, article twenty of this
47 chapter;

48 (o) "Low density county" means a county whose ratio of
49 student population to square miles is less than or equal to the
50 state average ratio as computed by the state department of
51 education;

52 (p) "High density county" means a county whose ratio of
53 student population to square miles is greater than the state
54 average ratio as computed by the state department of education;
55 and

56 (q) "Casual deficit" means a deficit of not more than 3
57 percent of the approved levy estimate or a deficit that is
58 nonrecurring from year to year.

CHAPTER 268

**(Com. Sub. for H. B. 3015 — By Delegates
Michael, Proudfoot, Douglas and Doyle)**

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article eighteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the power of the state rail authority to enter contracts and agreements; authorizing the acquisition of rolling stock and equipment of a specified value in lieu of meeting contract requirements otherwise imposed on spending units; raising the cost threshold under which certain lowest responsible bidders on contracts may be selected; and requiring legislative rules.

Be it enacted by the Legislature of West Virginia:

That section six, article eighteen, 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 18. WEST VIRGINIA STATE RAIL AUTHORITY.

§29-18-6. Powers, duties and responsibilities of authority generally.

1 The West Virginia state rail authority is hereby granted, has
2 and may exercise all powers necessary or appropriate to carry
3 out and effectuate its corporate purpose.

4 (a) The authority may:

5 (1) Adopt, and from time to time, amend and repeal bylaws
6 necessary and proper for the regulation of its affairs and the
7 conduct of its business and propose rules for legislative
8 approval in accordance with the provisions of article three,
9 chapter twenty-nine-a of this code, to implement and make
10 effective its powers and duties.

11 (2) Adopt an official seal.

12 (3) Maintain a principal office and, if necessary, regional
13 suboffices at locations properly designated or provided.

14 (4) Sue and be sued in its own name and plead and be
15 impleaded in its own name, and particularly to enforce the
16 obligations and covenants made under sections ten, eleven and
17 sixteen of this article. Any actions against the authority shall be
18 brought in the circuit court of Kanawha County. The location
19 of the principal office of the authority shall be determined by
20 the governor.

21 (5) Make loans and grants to governmental agencies and
22 persons for carrying out railroad projects by any governmental
23 agency or person and, in accordance with chapter twenty-nine-a
24 of this code, propose rules for legislative approval and proce-
25 dures for making such loans and grants.

26 (6) Acquire, construct, reconstruct, enlarge, improve,
27 furnish, equip, maintain, repair, operate, lease or rent to or
28 contract for operation by a governmental agency or person,
29 railroad projects and, in accordance with chapter twenty-nine-a
30 of this code, propose legislative rules for the use of these
31 projects.

32 (7) Make available the use or services of any railroad
33 project to one or more persons, one or more governmental
34 agencies, or any combination thereof.

35 (8) Issue railroad maintenance authority bonds and notes
36 and refunding bonds of the state, payable solely from revenues
37 as provided in section ten of this article unless the bonds are
38 refunded by refunding bonds, for the purpose of paying any part
39 of the cost of one or more railroad projects or parts thereof.

40 (9) Acquire, by gift or purchase, hold and dispose of real
41 and personal property in the exercise of its powers and the
42 performance of its duties as set forth in this article.

43 (10) Acquire in the name of the state, by purchase or
44 otherwise, on terms and in the manner it considers proper, or by
45 the exercise of the right of eminent domain in the manner
46 provided in chapter fifty-four of this code, rail properties and
47 appurtenant rights and interests necessary for carrying out
48 railroad projects.

49 (11) (A) Make and enter into all contracts and agreements
50 and execute all instruments necessary or incidental to the
51 performance of its duties and the execution of its powers
52 including, but not limited to, the power to make contract and
53 agreements in accordance with the provisions set forth in
54 paragraph (B) of this subdivision.

55 (B) Make and enter into contracts and agreements to
56 acquire rolling stock or equipment with a value of one hundred
57 thousand dollars or less exempt from the provisions of article
58 three, chapter five-a of this code.

59 (i) The authority shall propose rules for legislative approval
60 in accordance with the provisions of article three, chapter
61 twenty-nine-a of this code which set forth the methods for
62 determining value of rolling stock or equipment to be purchased
63 in accordance with the provisions of paragraph (B) of this
64 subdivision.

65 (C) Where rolling stock, equipment or trackage of the
66 authority is in need of immediate maintenance, repair or
67 reconstruction in order to avoid a cessation of its operations,
68 economic loss, the inability to provide essential service to
69 customers or danger to authority personnel or the public, the
70 following requirements and procedures for entering into the
71 contract or agreement to remedy the condition shall be in lieu
72 of those provided in article three, chapter five-a of this code or
73 any legislative rule promulgated pursuant thereto:

74 (i) If the cost under the contract or agreement involves an
75 expenditure of more than one thousand dollars, but ten thousand
76 dollars or less, the authority shall award the contract to or enter
77 into the agreement with the lowest responsible bidder based
78 upon at least three oral bids made pursuant to the requirements
79 of the contract or agreement.

80 (ii) If the cost under the contract or agreement, other than
81 one for compensation for personal services, involves an
82 expenditure of more than ten thousand dollars, but one hundred
83 thousand dollars or less, the authority shall award the contract
84 to or enter into the agreement with the lowest responsible
85 bidder based upon at least three bids, submitted to the authority
86 in writing on letterhead stationery, made pursuant to the
87 requirements of the contract or agreement.

88 (D) Notwithstanding any other provision of this code to the
89 contrary, a contract or lease for the operation of a railroad
90 project constructed and owned by the authority or an agreement
91 for cooperation in the acquisition or construction of a railroad
92 project pursuant to section sixteen of this article is not subject
93 to the provisions of article three, chapter five-a of this code or
94 any legislative rule promulgated pursuant thereto, and the
95 authority may enter into the contract or lease or the agreement
96 pursuant to negotiation and upon such terms and conditions and
97 for a period of time as it finds to be reasonable and proper

98 under the circumstances and in the best interests of proper
99 operation or of efficient acquisition or construction of the
100 railroad project.

101 (E) The authority may reject any and all bids. A bond with
102 good and sufficient surety, approved by the authority, is
103 required of all contractors in an amount equal to at least fifty
104 percent of the contract price, conditioned upon the faithful
105 performance of the contract.

106 (12) Appoint a director and employ managers, superinten-
107 dents and other employees and retain or contract with consult-
108 ing engineers, financial consultants, accountants, attorneys and
109 other consultants and independent contractors as are necessary
110 in its judgment to carry out the provisions of this article, and fix
111 the compensation or fees thereof. All expenses thereof are
112 payable from the proceeds of railroad maintenance authority
113 revenue bonds or notes issued by the authority, from revenues
114 and funds appropriated for this purpose by the Legislature or
115 from grants from the federal government which may be used for
116 such purpose.

117 (13) Receive and accept from any state or federal agency,
118 grants for or in aid of the construction of any railroad project or
119 for research and development with respect to railroads and
120 receive and accept aid or contributions from any source of
121 money, property, labor or other things of value, to be held, used
122 and applied only for the purposes for which the grants and
123 contributions are made.

124 (14) Engage in research and development with respect to
125 railroads.

126 (15) Purchase fire and extended coverage and liability
127 insurance for any railroad project and for the principal office
128 and suboffices of the authority, insurance protecting the
129 authority and its officers and employees against liability, if any,

130 for damage to property or injury to or death of persons arising
131 from its operations and be a member of, and to participate in,
132 the state workers' compensation program.

133 (16) Charge, alter and collect rates, rentals and other
134 charges for the use or services of any railroad project as
135 provided in this article.

136 (17) Do all acts necessary and proper to carry out the
137 powers expressly granted to the authority in this article.

138 (b) In addition, the authority has the power to:

139 (1) Acquire rail properties both within and not within the
140 jurisdiction of the interstate commerce commission and rail
141 properties within the purview of the federal Regional Rail
142 Reorganization Act of 1973, any amendments to it and any
143 other relevant federal legislation.

144 (2) Enter into agreements with owners of rail properties for
145 the acquisition of rail properties or use, or both of rail proper-
146 ties upon the terms, conditions, rates or rentals that can best
147 effectuate the purposes of this article.

148 (3) Acquire rail properties and other property of a railroad
149 in concert with another state or states as is necessary to ensure
150 continued rail service in this state.

151 (4) Establish a state plan for rail transportation and local
152 rail services.

153 (5) Administer and coordinate the state plan.

154 (6) Provide in the state plan for the equitable distribution of
155 federal rail service continuation subsidies among state, local
156 and regional transportation authorities.

157 (7) Promote, supervise and support safe, adequate and
158 efficient rail services.

159 (8) Employ sufficiently trained and qualified personnel for
160 these purposes.

161 (9) Maintain adequate programs of investigation, research,
162 promotion and development in connection with the purposes
163 and to provide for public participation therein.

164 (10) Provide satisfactory assurances on behalf of the state
165 that fiscal control and fund accounting procedures will be
166 adopted by the state necessary to assure proper disbursement of
167 and accounting for federal funds paid to the state as rail service
168 continuation subsidies.

169 (11) Comply with the regulations of the secretary of
170 transportation of the United States department of transportation
171 affecting federal rail service continuation programs.

172 (12) Do all things otherwise necessary to maximize federal
173 assistance to the state under Title IV of the federal Regional
174 Rail Reorganization Act of 1973, and to qualify for rail service
175 continuation subsidies pursuant to the federal Regional Rail
176 Reorganization Act of 1973.

CHAPTER 269

**(S. B. 124 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed March 8, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fifty-six, relating to prohibiting contractors from using or supplying steel products for state contract projects other than those steel products made in the United States; definitions; authorization by director of purchasing to use foreign steel products; civil penalties for use or supply of prohibited steel products; circumstances under which contractors are not subject to civil penalties; disposition of civil penalties collected; investigations and findings by director of purchasing; requests by director of purchasing to attorney general to commence civil actions for violations; circumstances under which provisions void; and resolution of conflicts between statutes.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. PURCHASING DIVISION.

§5A-3-56. Preference for the use of domestic steel products in state contract projects; exceptions; civil penalties.

1 (a)(1) Except when authorized pursuant to the provisions of
2 subsection (b) of this section, no contractor may use or supply
3 steel products for a state contract project other than those steel
4 products made in the United States.

5 (2) As used in this section:

6 (A) "State contract project" means any erection or construc-
7 tion of, or any addition to, alteration of or other improvement
8 to any building or structure, including, but not limited to, roads

9 or highways, or the installation of any heating or cooling or
10 ventilating plants or other equipment, or the supply of any
11 materials for such projects, pursuant to a contract with the state
12 of West Virginia for which bids were solicited on or after the
13 effective date of this section.

14 (B) "Steel products" means products rolled, formed,
15 shaped, drawn, extruded, forged, cast, fabricated or otherwise
16 similarly processed, or processed by a combination of two or
17 more of such operations, from steel made by the open hearth,
18 basic oxygen, electric furnace, bessemer or other steel making
19 process.

20 (C) "United States" means the United States of America
21 and includes all territory, continental or insular, subject to the
22 jurisdiction of the United States.

23 (b) Notwithstanding any provision of subsection (a) of this
24 section to the contrary, the director of the purchasing division
25 may, in writing, authorize the use of foreign steel products if:

26 (1) The cost for each contract item used does not exceed
27 one tenth of one percent of the total contract cost or two
28 thousand five hundred dollars, whichever is greater. For the
29 purposes of this section, the cost is the value of the steel
30 product as delivered to the project; or

31 (2) The director of the purchasing division determines that
32 specified steel materials are not produced in the United States
33 in sufficient quantity or otherwise are not reasonably available
34 to meet contract requirements.

35 (c) A contractor who uses steel products in violation of
36 subsection (a) of this section shall pay a civil penalty equal to
37 one and one-half times the cost of the steel products used in
38 violation of said subsection: *Provided*, That any contractor in

39 violation of this section who relied in good faith upon docu-
40 ments of title and origin indicating that the steel products were
41 made in the United States shall not be subject to the civil
42 penalty. All civil penalties paid pursuant to this section shall be
43 collected by the director and deposited in the general revenue
44 fund of the state.

45 (d) When the director of the purchasing division has
46 reasonable cause to believe that a contractor has used or is
47 using steel products in violation of subsection (a) of this
48 section, the director shall conduct an investigation to determine
49 whether the contractor has used or is using steel products in
50 violation of said subsection. Upon a finding by the director
51 pursuant to the investigation that the contractor has used or is
52 using steel products in violation of subsection (a) of this
53 section, the director shall request the attorney general to
54 commence an action under this section against the contractor
55 for the violation. Any action under this section is a civil action.

56 (e) If any of the requirements or provisions set forth in this
57 section jeopardize the receipt of federal funds, then such
58 requirement or provision shall be void and of no force and
59 effect.

60 (f) It is the intent of the Legislature that the provisions of
61 article nineteen, chapter five of this code continue in force,
62 except to the extent that if any provision of said article is
63 construed to conflict with a provision of this section, the
64 conflict shall be resolved in favor of the provisions of this
65 section.

66 (g) This section may be cited as the "West Virginia
67 American Steel Act of 2001".

CHAPTER 270

(H. B. 2146 — By Delegates R. Thompson and Perdue)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the prohibition against hunting on Sunday on private lands without the written consent of the landowner; and requiring a local option election on the issue of whether Sunday hunting should be permitted in the county.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5. Unlawful methods of hunting and fishing and other unlawful acts.

1 Except as authorized by the director, it is unlawful at any
2 time for any person to:

3 (1) Shoot at or to shoot any wild bird or animal unless it is
4 plainly visible to him or her;

5 (2) Dig out, cut out or smoke out, or in any manner take or
6 attempt to take, any live wild animal or wild bird out of its den

7 or place of refuge, except as may be authorized by rules
8 promulgated by the director or by law;

9 (3) Make use of, or take advantage of, any artificial light in
10 hunting, locating, attracting, taking, trapping or killing any wild
11 bird or wild animal, or to attempt to do so, while having in his
12 or her possession or subject to his or her control, or for any
13 person accompanying him or her to have in his or her posses-
14 sion or subject to his or her control, any firearm, whether cased
15 or uncased, bow, arrow, or both, or other implement or device
16 suitable for taking, killing or trapping a wild bird or animal:
17 *Provided*, That it may not be unlawful to hunt or take raccoon,
18 opossum or skunk by the use of artificial lights. No person shall
19 be guilty of a violation of this subdivision merely because he or
20 she looks for, looks at, attracts or makes motionless a wild bird
21 or wild animal with or by the use of an artificial light, unless at
22 the time he or she has in his or her possession a firearm,
23 whether cased or uncased, bow, arrow, or both, or other
24 implement or device suitable for taking, killing or trapping a
25 wild bird or wild animal, or unless the artificial light (other than
26 the head lamps of an automobile or other land conveyance) is
27 attached to, a part of, or used from within or upon an automo-
28 bile or other land conveyance.

29 Any person violating the provisions of this subdivision
30 shall be guilty of a misdemeanor and, upon conviction thereof,
31 shall for each offense be fined not less than one hundred dollars
32 nor more than five hundred dollars and shall be imprisoned in
33 the county jail for not less than ten days nor more than one
34 hundred days;

35 (4) Hunt for, take, kill, wound or shoot at wild animals or
36 wild birds from an airplane, or other airborne conveyance, an
37 automobile, or other land conveyance, or from a motor-driven
38 water conveyance, except as may be authorized by rules
39 promulgated by the director;

40 (5) Take any beaver or muskrat by any means other than by
41 trap;

42 (6) Catch, capture, take or kill by seine, net, bait, trap or
43 snare or like device of any kind, any wild turkey, ruffed grouse,
44 pheasant or quail;

45 (7) Destroy or attempt to destroy needlessly or willfully the
46 nest or eggs of any wild bird or have in his or her possession the
47 nest or eggs unless authorized to do so under rules promulgated
48 by or under a permit issued by the director;

49 (8) Except as provided in section six of this article, carry an
50 uncased or loaded gun in any of the woods of this state except
51 during the open firearms hunting season for wild animals and
52 nonmigratory wild birds within any county of the state, unless
53 he or she has in his or her possession a permit in writing issued
54 to him or her by the director: *Provided*, That this section may
55 not prohibit hunting or taking of unprotected species of wild
56 animals and wild birds and migratory wild birds, during the
57 open season, in the open fields, open water and open marshes
58 of the state;

59 (9) Have in his or her possession a loaded firearm or a
60 firearm from the magazine of which all shells and cartridges
61 have not been removed, in or on any vehicle or conveyance, or
62 its attachments, within the state, except as may otherwise be
63 provided by law or regulation. Except as hereinafter provided,
64 between five o'clock postmeridian of one day and seven
65 o'clock antemeridian, eastern standard time of the day follow-
66 ing, any unloaded firearm, being lawfully carried in accordance
67 with the foregoing provisions, shall be so carried only when in
68 a case or taken apart and securely wrapped. During the period
69 from the first day of July to the thirtieth day of September,
70 inclusive, of each year, the foregoing requirements relative to
71 carrying certain unloaded firearms shall be permissible only
72 from eight-thirty o'clock postmeridian to five o'clock

73 antemeridian, eastern standard time: *Provided*, That the time
74 periods for carrying unloaded and uncased firearms are ex-
75 tended for one hour after the postmeridian times and one hour
76 before the antemeridian times established above if a hunter is
77 preparing to or in the process of transporting or transferring the
78 firearms to or from a hunting site, campsite, home or other
79 place of abode;

80 (10) Hunt, catch, take, kill, trap, injure or pursue with
81 firearms or other implement by which wildlife may be taken
82 after the hour of five o'clock antemeridian on Sunday on
83 private land without the written consent of the landowner any
84 wild animals or wild birds except when a big game season
85 opens on a Monday, the Sunday prior to that opening day will
86 be closed for any taking of wild animals or birds after five
87 o'clock antemeridian on that Sunday: *Provided*, That traps
88 previously and legally set may be tended after the hour of five
89 o'clock antemeridian on Sunday, and the person so doing may
90 carry only a twenty-two caliber firearm for the purpose of
91 humanely dispatching trapped animals. Any person violating
92 the provisions of this subdivision is guilty of a misdemeanor
93 and, upon conviction thereof, in addition to any fines that may
94 be imposed by this or other sections of this code, shall be
95 subject to a one hundred dollar fine;

96 (11) Hunt with firearms or long bow while under the
97 influence of intoxicating liquor;

98 (12) Hunt, catch, take, kill, injure or pursue a wild animal
99 or bird with the use of a ferret;

100 (13) Buy raw furs, pelts or skins of fur-bearing animals
101 unless licensed to do so;

102 (14) Catch, take, kill or attempt to catch, take or kill any
103 fish at any time by any means other than by rod, line and hooks
104 with natural or artificial lures unless otherwise authorized by
105 law or rules issued by the director: *Provided*, That snaring of

106 any species of suckers, carp, fallfish and creek chubs shall at all
107 times be lawful;

108 (15) Employ or hire, or induce or persuade, by the use of
109 money or other things of value, or by any means, any person to
110 hunt, take, catch or kill any wild animal or wild bird except
111 those species on which there is no closed season, or to fish for,
112 catch, take or kill any fish, amphibian or aquatic life which is
113 protected by the provisions of this chapter or rules of the
114 director, or the sale of which is prohibited;

115 (16) Hunt, catch, take, kill, capture, pursue, transport,
116 possess or use any migratory game or nongame birds included
117 in the terms of conventions between the United States and Great
118 Britain and between the United States and United Mexican
119 States for the protection of migratory birds and wild mammals
120 concluded, respectively, the sixteenth day of August, one
121 thousand nine hundred sixteen, and the seventh day of Febru-
122 ary, one thousand nine hundred thirty-six, except during the
123 time and in the manner and numbers prescribed by the Federal
124 Migratory Bird Treaty Act and regulations made thereunder;

125 (17) Kill, take, catch or have in his or her possession, living
126 or dead, any wild bird, other than a game bird; or expose for
127 sale, or transport within or without the state any bird, except as
128 aforesaid. No part of the plumage, skin or body of any protected
129 bird shall be sold or had in possession for sale, except mounted
130 or stuffed plumage, skin, bodies or heads of the birds legally
131 taken and stuffed or mounted, irrespective of whether the bird
132 was captured within or without this state, except the English or
133 European sparrow (*Passer domesticus*), starling (*Sturnus*
134 *vulgaris*), crow (*Corvus brachyrhynchos*) and cowbird
135 (*Molothrus ater*), which may not be protected and the killing
136 thereof at any time is lawful;

137 (18) Use dynamite or any like explosive or poisonous
138 mixture placed in any waters of the state for the purpose of
139 killing or taking fish. Any person violating the provisions of
140 this subdivision shall be guilty of a felony and, upon conviction
141 thereof, shall be fined not more than five hundred dollars or
142 imprisoned for not less than six months nor more than three
143 years, or both fined and imprisoned;

144 (19) Have a bow and gun, or have a gun and any arrow or
145 arrows, in the fields or woods at the same time;

146 (20) Have a crossbow in the woods or fields or use a
147 crossbow to hunt for, take or attempt to take any wildlife;

148 (21) Take or attempt to take turkey, bear, elk or deer with
149 any arrow unless the same is equipped with a point having at
150 least two sharp cutting edges measuring in excess of three
151 fourths of an inch wide;

152 (22) Take or attempt to take any wildlife with an arrow
153 having an explosive head or shaft, a poisoned arrow or an arrow
154 which would affect wildlife by any chemical action;

155 (23) Shoot an arrow across any public highway or from
156 aircraft, motor-driven watercraft, motor vehicle or other land
157 conveyance;

158 (24) Permit any dog owned by him or her or under his or
159 her control to chase, pursue or follow upon the track of any wild
160 animal or wild bird, either day or night, between the first day of
161 May and the fifteenth day of August next following: *Provided,*
162 That dogs may be trained on wild animals and wild birds,
163 except deer and wild turkeys, and field trials may be held or
164 conducted on the grounds or lands of the owner or by his or her
165 bona fide tenant or tenants or upon the grounds or lands of
166 another person with his or her written permission or on public
167 lands, at any time: *Provided, however,* That nonresidents may

168 not train dogs in this state at any time except during the legal
169 small game hunting season: *Provided further*, That the person
170 training said dogs does not have firearms or other implements
171 in his or her possession during the closed season on wild
172 animals and wild birds, whereby wild animals or wild birds
173 could be taken or killed;

174 (25) Conduct or participate in a field trial, shoot-to-retrieve
175 field trial, water race or wild hunt hereafter referred to as trial:
176 *Provided*, That any person, group of persons, club or organiza-
177 tion may hold such trial at any time of the year upon obtaining
178 a permit as is provided for in section fifty-six of this article. The
179 person responsible for obtaining the permit shall prepare and
180 keep an accurate record of the names and addresses of all
181 persons participating in said trial, and make same readily
182 available for inspection by any conservation officer upon
183 request;

184 (26) Except as provided in section four of this article, hunt,
185 catch, take, kill or attempt to hunt, catch, take or kill any wild
186 animal, wild bird or wild fowl except during the open season
187 established by rule of the director as authorized by subdivision
188 (6), section seven, article one of this chapter;

189 (27) Hunting on public lands on Sunday after five o'clock
190 antemeridian is prohibited; and

191 (28) Hunt, catch, take, kill, trap, injure or pursue with
192 firearms or other implement which wildlife can be taken, on
193 private lands on Sunday after the hour of five o'clock
194 antemeridian: *Provided*, That the provisions of this subdivision
195 do not apply in any county until the county commission of the
196 county holds an election on the question of whether the
197 provisions of this subdivision prohibiting hunting on Sunday
198 shall apply within the county and the voters approve the
199 allowance of hunting on Sunday in the county. The election

200 shall be determined by a vote of the resident voters of the
201 county in which the hunting on Sunday is proposed to be
202 authorized. The county commission of the county in which
203 Sunday hunting is proposed shall give notice to the public of
204 the election by publication of the notice as a Class II-0 legal
205 advertisement in compliance with the provisions of article
206 three, chapter fifty-nine of this code, and the publication area
207 for the publication shall be the county in which the election is
208 to be held. The date of the last publication of the notice shall
209 fall on a date within the period of the fourteen consecutive days
210 next preceding the election.

211 On the local option election ballot shall be printed the
212 following:

213 Shall hunting on Sunday be authorized in _____
214 County?

215 Yes No

216 (Place a cross mark in the square opposite your choice.)

217 Any local option election to approve or disapprove of the
218 proposed authorization of Sunday hunting within a county shall
219 be in accordance with procedures adopted by the commission.
220 The local option election may be held in conjunction with a
221 primary or general election, or at a special election. Approval
222 shall be by a majority of the voters casting votes on the question
223 of approval or disapproval of Sunday hunting at the election.

224 If a majority votes against allowing Sunday hunting, no
225 election on the issue may be held for a period of one hundred
226 four weeks. If a majority votes "yes" no election reconsidering
227 the action may be held for a period of five years. A local option
228 election may thereafter be held if a written petition of qualified
229 voters residing within the county equal to at least five percent
230 of the number of persons who were registered to vote in the

231 next preceding general election is received by the county
232 commission of the county in which Sunday hunting is autho-
233 rized. The petition may be in any number of counterparts. The
234 election shall take place at the next primary or general election
235 scheduled more than ninety days following receipt by the
236 county commission of the petition required by this subsection:
237 *Provided*, That the issue may not be placed on the ballot until
238 all statutory notice requirements have been met. No local law
239 or regulation providing any penalty, disability, restriction,
240 regulation or prohibition of Sunday hunting may be enacted,
241 and the provisions of this article preempt all regulations, rules,
242 ordinances and laws of any county or municipality in conflict
243 with this subdivision.

CHAPTER 271

**(H. B. 3241 — By Delegates Douglas, Kuhn, Varner,
Butcher, Manchin, Prunty and Leggett)**

[Passed April 14, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact sections four, four-a, five, five-a and five-b, 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, five-a and five-b, article ten, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.

§4-10-4. Termination of agencies following full performance evaluations.

§4-10-4a. Termination of agencies previously subject to full performance evaluations 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.

§4-10-5b. Termination of boards created to regulate professions and occupations.

§4-10-4. Termination of agencies following full performance evaluations.

1 The following agencies terminate on the date indicated, but
2 no agency terminates under this section unless a full perfor-
3 mance evaluation has been conducted upon the agency:

4 (1) On the first day of July, two thousand two: Division of
5 highways; division of labor; department of health and human
6 resources; division of natural resources; and division of
7 corrections.

8 (2) On the first day of July, two thousand three: Division of
9 culture and history; division of motor vehicles; division of
10 environmental protection; and school building authority.

11 (3) On the first day of July, two thousand four: Division of
12 personnel; division of rehabilitation services; and workers'
13 compensation.

14 (4) On the first day of July, two thousand five: Parkways,
15 economic development and tourism authority; department of
16 tax and revenue; and tourism functions within the development
17 office.

§4-10-4a. Termination of agencies previously subject to full performance evaluations following compliance monitoring and further inquiry updates.

1 The following agencies terminate on the date indicated, but
2 no agency terminates under this section unless a compliance
3 monitoring and further inquiry update has been completed on
4 the agency subsequent to the prior completion of a full perfor-
5 mance evaluation:

6 On the first day of July, two thousand two: Purchasing
7 division within the department of administration.

8 On the first day of July, two thousand three: Office of
9 judges in workers' compensation.

**§4-10-5. Termination of agencies following preliminary perfor-
mance reviews.**

1 The following agencies terminate on the date indicated, but
2 no agency terminates under this section unless a preliminary
3 performance review has been conducted upon the agency:

4 (1) On the first day of July, one thousand nine hundred
5 ninety-six: Juvenile facilities review panel.

6 (2) On the first day of July, one thousand nine hundred
7 ninety-seven: Public employees insurance agency advisory
8 board; cable television advisory board.

9 (3) On the first day of July, one thousand nine hundred
10 ninety-nine: Tree fruit industry self improvement assessment
11 program.

12 (4) On the first day of July, two thousand: Terms of family
13 law master and family law master system.

14 (5) On the first day of July, two thousand two: Whitewater
15 commission within the division of natural resources; state
16 geological and economic survey; unemployment compensation;
17 public employees insurance agency; personal assistance service

18 program; records management and preservation board; office of
19 water resources of the division of environmental protection;
20 facilities protection division; West Virginia contractor licensing
21 board; women's commission; ethics commission; veterans'
22 council; educational broadcasting authority; division of
23 protective services; investment management board and state rail
24 authority.

25 (6) On the first day of July, two thousand three: Driver's
26 licensing advisory board; West Virginia commission for
27 national and community service; West Virginia's membership
28 in the southern regional education board; bureau of senior
29 services; public employees insurance agency finance board;
30 state police; oil and gas inspector's examining board; advisory
31 council on public health; office of explosives and blasting;
32 office of coalfield community development; workers' compen-
33 sation appeal board; care home advisory board; holocaust
34 education commission; governors' office of fiscal analysis and
35 management; marketing and development division of the
36 department of agriculture; manufactured housing construction
37 and safety board; and environmental quality board.

38 (7) On the first day of July, two thousand four: Meat
39 inspection program of the department of agriculture; state board
40 of risk and insurance management; real estate commission;
41 rural health advisory panel; state fire commission; motorcycle
42 safety awareness board; motor vehicle dealers advisory board;
43 interstate commission on uniform state laws; design-build
44 board; center for professional development and interstate
45 commission on the Potomac River basin.

46 (8) On the first day of July, two thousand five: Board of
47 banking and financial institutions; lending and credit rate board;
48 governor's cabinet on children and families; oil and gas
49 conservation commission; health care authority; and emergency
50 medical services advisory council.

51 (9) On the first day of July, two thousand six: Family
52 protection services board; medical services fund advisory
53 council; West Virginia stream partners program; Ohio River
54 valley water sanitation commission; state lottery commission;
55 and soil conservation committee.

56 (10) On the first day of July, two thousand seven: Human
57 rights commission.

§4-10-5a. Termination of agencies previously subject to preliminary performance reviews following compliance monitoring and further inquiry updates.

1 The following agencies terminate on the date indicated, but
2 no agency terminates under this section unless a compliance
3 monitoring and further inquiry update has been completed on
4 the agency subsequent to the prior completion of a preliminary
5 performance review:

6 (1) On the first day of July, two thousand: State building
7 commission.

8 (2) On the first day of July, two thousand two: Capitol
9 building commission; racing commission; bureau for child
10 support enforcement; parks section and parks functions of the
11 division of natural resources; and public defender services.

12 (3) On the first day of July, two thousand three: Commis-
13 sion for the deaf and hard-of-hearing; and public service
14 commission.

15 (4) On the first day of July, two thousand four: Office of the
16 environmental advocate.

§4-10-5b. Termination of boards created to regulate professions and occupations.

1 (a) The legislative auditor shall evaluate each board created
2 under chapter thirty of this code to regulate professions and
3 occupations, at least once every twelve years. The evaluation
4 shall assess whether the board complies with the policies and
5 provisions of chapter thirty of this code and other applicable
6 laws and rules, whether the board follows a disciplinary
7 procedure which observes due process rights and protects the
8 public interest, and whether the public interest requires that the
9 board be continued.

10 (b) The following boards terminate on the date indicated,
11 but no board terminates under this section unless a regulatory
12 board evaluation has been conducted upon the board:

13 (1) On the first day of July, two thousand one: Board of
14 licensed dietitians.

15 (2) On the first day of July, two thousand two: Board of
16 examiners for speech language pathology and audiology; board
17 of examiners for registered practical nurses; board of examiners
18 for licensed practical nurses; and board of architects.

19 (3) On the first day of July, two thousand three: Board of
20 pharmacy; board of dental examiners; board of osteopathy; and
21 massage therapy licensure board.

22 (4) On the first day of July, two thousand four: Board of
23 examiners of land surveyors; board of landscape architects; and
24 board of registration for foresters.

25 (5) On the first day of July, two thousand five: Board of
26 social work examiners; board of accountancy; board of veteri-
27 nary medicine; acupuncture board; and board of medicine.

28 (6) On the first day of July, two thousand six: Board of
29 examiners in counseling; and board of examiners of psycholo-
30 gists.

31 (7) On the first day of July, two thousand seven: Board of
32 registration for sanitarians; board of embalmers and funeral
33 directors; board of optometry; and board of respiratory care
34 practitioners.

35 (8) On the first day of July, two thousand eight: Nursing
36 home administrators board; board of hearing aid dealers; and
37 board of barbers and cosmetologists.

38 (9) On the first day of July, two thousand nine: Board of
39 physical therapy; board of chiropractic examiners; and board of
40 occupational therapy.

41 (10) On the first day of July, two thousand ten: Professional
42 firefighters board; board of registration for professional
43 engineers; and radiologic technology board of examiners.

CHAPTER 272

**(S. B. 212 — By Senators Bowman, Bailey, Burnette,
Jackson, Kessler, Minard, Redd, Rowe, Snyder,
Wooton, Boley, Minear and Sprouse)**

[Passed March 30, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section four, article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section twenty-one, all relating to continuing the human rights commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. HUMAN RIGHTS COMMISSION.

§5-11-4. Powers and objectives.

§5-11-21. Termination of commission.

§5-11-4. Powers and objectives.

1 The commission shall have the power and authority and
2 shall perform the functions and services as in this article
3 prescribed and as otherwise provided by law. The commission
4 shall encourage and endeavor to bring about mutual understand-
5 ing and respect among all racial, religious and ethnic groups
6 within the state and shall strive to eliminate all discrimination
7 in employment and places of public accommodations by virtue
8 of race, religion, color, national origin, ancestry, sex, age,
9 blindness or handicap and shall strive to eliminate all discrimi-
10 nation in the sale, purchase, lease, rental or financing of
11 housing and other real property by virtue of race, religion,
12 color, national origin, ancestry, sex, blindness, handicap or
13 familial status.

§5-11-21. Termination of commission

1 The human rights commission shall terminate on the first
2 day of July, two thousand seven, pursuant to the provisions of
3 article ten, chapter four of this code, unless sooner terminated,
4 continued or reestablished pursuant to the provisions of that
5 article.

CHAPTER 273

(S. B. 448 — By Senators Bowman, Bailey, Burnette,
Chafin, Kessler, Minard, Redd, Rowe and Boley)

[Passed April 6, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section one, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section fifty-seven, all relating to continuing the purchasing division within the department of administration.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. PURCHASING DIVISION.

§5A-3-1. Division created; purpose; director; applicability of article; continuation.
§5A-3-57. Continuation of the division of purchasing.

§5A-3-1. Division created; purpose; director; applicability of article; continuation.

1 There is hereby created the purchasing division of the
2 department of administration for the purpose of establishing
3 centralized offices to provide purchasing, travel and leasing
4 services to the various state agencies.

5 No person shall be appointed director of the purchasing
6 division unless that person is, at the time of appointment, a
7 graduate of an accredited college or university and shall have
8 spent a minimum of ten of the fifteen years immediately
9 preceding his or her appointment employed in an executive
10 capacity in purchasing for any unit of government or for any
11 business, commercial or industrial enterprise.

12 The provisions of this article shall apply to all of the
13 spending units of state government, except as is otherwise
14 provided by this article or by law: *Provided*, That the provisions
15 of this article shall not apply to the legislative branch unless
16 otherwise provided or the Legislature or either house thereof
17 requests the director to render specific services under the
18 provisions of this chapter, nor to purchases of stock made by
19 the alcohol beverage control commissioner, nor to purchases of
20 textbooks for the state board of education.

§5A-3-57. Continuation of the division of purchasing.

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the division of purchasing within the department of
3 administration shall continue to exist until the first day of July,
4 two thousand two, unless sooner terminated, continued or
5 reestablished pursuant to the provisions of that article.

CHAPTER 274

**(H. B. 2721 — By Delegates Douglas, Kuhn, Butcher,
Hatfield, Manchin, Prunty and Leggett)**

[Passed April 3, 2001; in effect July 1, 2001. 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. Continuation of the department of health and human
resources.**

1 The department of health and human resources shall be
2 charged with the administration of this chapter. The department
3 of health and human resources shall continue to exist until the
4 first day of July, two thousand two, to permit a review of their
5 functions to be undertaken by the joint committee on govern-
6 ment operations as part of the full performance evaluation of
7 the department of health and human resources scheduled to
8 continue during the interim of the Legislature in the year two
9 thousand one.

CHAPTER 275

**(S. B. 213 — By Senators Bowman, Bailey, Burnette,
Jackson, Kessler, Minard, Redd, Rowe, Snyder,
Wooton, Boley, Minear and Sprouse)**

[Passed March 30, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend article 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 eight, relating to continuing the department of tax and revenue.

Be it enacted by the Legislature of West Virginia:

That article 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 eight, to read as follows:

ARTICLE 1. SUPERVISION.

§11-1-8. Termination.

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the department of tax and revenue shall continue to exist
3 until the first day of July, two thousand five, unless sooner
4 terminated, continued or reestablished pursuant to the provi-
5 sions of that article.

CHAPTER 276

(H. B. 2846 — By Delegates Kuhn, Butcher, Hatfield,
Manchin, Prunty, Border and Leggett)

[Passed April 11, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section fifty, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the West Virginia state police.

Be it enacted by the Legislature of West Virginia:

That section fifty, 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.

§15-2-50. Termination date.

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the West Virginia state police shall continue to exist until
3 the first day of July, two thousand three, unless sooner termi-
4 nated, continued or reestablished by act of the Legislature.

CHAPTER 277

(S. B. 496 — By Senators Bailey, Burnette, Chafin, Jackson, McCabe, Minard, Redd, Rowe, Wooton and Boley)

[Passed April 6, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend article two, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-four, relating to continuing the department of motor vehicles.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DEPARTMENT OF MOTOR VEHICLES.

§17A-2-24. Termination of department.

1 The department of motor vehicles shall terminate on the
2 first day of July, two thousand three, pursuant to the provisions
3 of article ten, chapter four of this code unless sooner termi-
4 nated, continued or reestablished pursuant to the provisions of
5 that article.

CHAPTER 278

**(H. B. 2573 — By Delegates Douglas, Kuhn, Butcher,
Hatfield, Manchin, Prunty and Leggett)**

[Passed March 27, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section six, article sixteen, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section six-b, relating to continuing the rural health advisory panel.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. HEALTH CARE EDUCATION..

§18B-16-6. Creation of the West Virginia rural health advisory panel.

§18B-16-6b. Termination of advisory panel.

§18B-16-6. Creation of the West Virginia rural health advisory panel.

- 1 (a) The West Virginia rural health advisory panel is hereby
- 2 created and the rural health initiative advisory panel is hereby
- 3 terminated as of the first day of July, one thousand nine
- 4 hundred ninety-five. The advisory panel, which shall be
- 5 appointed by the governor after consulting with the vice

6 chancellor, shall consist of one community representative from
7 each of the consortia of primary health care education sites; five
8 members shall be rural health care providers, two of whom
9 shall be representatives of rural health care facilities selected
10 from such lists as may be submitted by associations interested
11 or involved in the provision of rural health care, two of whom
12 shall be physicians engaged in the private practice of rural
13 medicine, and one of whom shall be an advanced nurse practi-
14 tioner or a nurse midwife with experience in rural health care
15 delivery; the dean or designee from each of the participating
16 health sciences schools, ex officio; one representative from
17 private colleges; one representative from the state college
18 system; one site coordinator; the commissioner of public health,
19 ex officio; and the director of the office of community and rural
20 health services, ex officio. Except for the ex officio members,
21 members of the panel shall serve for staggered three-year terms:
22 *Provided*, That one third of the initial appointments shall be
23 designated by the governor for one-year terms and one third of
24 the initial appointments shall be designated by the governor for
25 two-year terms.

26 Members of the advisory panel shall be reimbursed for the
27 cost of reasonable and necessary expenses actually incurred in
28 the performance of their duties: *Provided*, That members of the
29 panel who are employed by the state of West Virginia shall not
30 be reimbursed for their expenses under the provisions of this
31 section.

32 (b) The functions and duties of the panel are to recommend
33 policies and procedures to the vice chancellor related to the
34 rural health initiative and to oversee and coordinate implemen-
35 tation of those policies and procedures.

36 (c) The advisory panel has the power and the duty to
37 recommend rural health care facilities to be established as
38 primary health care education sites. Such recommendation shall

39 be made to the vice chancellor in accordance with the criteria
40 set forth in section seven of this article. After review of the
41 proposals submitted to the vice chancellor by the schools of
42 medicine pursuant to section eight of this article, the panel's
43 recommendation shall include an estimation of the costs to be
44 allocated per site from available funds in the university of West
45 Virginia health sciences account in the line item designated for
46 rural health initiative site support.

47 (d) The advisory panel shall adopt guidelines regarding the
48 application by rural health care facilities for selection as
49 primary health care education sites and shall approve an
50 application form which provides the panel with sufficient
51 information to consider the criteria set forth in section eight of
52 this article. The guidelines and application shall be sent by
53 registered mail to each rural health care facility in the state as
54 soon as practicable after the effective date of this section.

55 (e) The advisory panel shall provide an ongoing evaluation
56 of the rural health initiative and shall make the reports required
57 under this article.

58 (f) For purposes of addressing primary care physician and
59 other health care provider recruitment and retention efforts,
60 there is hereby created within the rural health advisory panel a
61 committee on recruitment and retention, which shall include
62 member representatives of health care providers, consumers,
63 members of the advisory panel and the health sciences schools.
64 All member representatives shall be selected by the vice
65 chancellor for health sciences in conjunction with the director
66 of the office of community and rural health. All operational
67 costs of the recruitment and retention committee shall be paid
68 by the rural health advisory panel.

69 (1) The recruitment and retention committee and the vice
70 chancellor of health sciences, in conjunction with the director
71 of the office of community and rural health services, may
72 facilitate statewide and interagency coordination of the recruit-
73 ment and retention of primary care physicians and other health
74 care related providers to serve the state of West Virginia.

75 (2) Such responsibility for and coordination of primary care
76 physician recruitment and retention efforts shall include, but are
77 not limited to, working cooperatively with health care agencies
78 and economic development agencies of the state.

79 (3) As part of its duties, the recruitment and retention
80 committee shall provide by the thirty-first day of December,
81 one thousand nine hundred ninety-eight, and no less than
82 annually thereafter, a report of its findings to the legislative
83 oversight commission on education accountability and the
84 legislative oversight commission on health and human re-
85 sources accountability. The report shall address the success of
86 the state's primary care physician and other health care related
87 provider recruitment and retention efforts, recommendations for
88 improvements in all related areas of recruitment and retention
89 efforts, recommendations for statutory or regulatory changes,
90 as well as any other matters which the recruitment and retention
91 committee or the rural health advisory panel deems relevant to
92 carrying out the intent of this article.

§18B-16-6b. Termination of advisory panel.

1 The rural health advisory panel shall terminate on the first
2 day of July, two thousand four, pursuant to the provisions of
3 article ten, chapter four of this code, unless sooner terminated,
4 continued or reestablished pursuant to the provisions of that
5 article.

CHAPTER 279

(H. B. 2893 — By Delegates Douglas, Kuhn, Hatfield,
Manchin, Prunty, Ellem and Walters)

[Passed April 11, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section four, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the department 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. DEPARTMENT OF ENVIRONMENTAL PROTECTION.

§22-1-4. Department of environmental protection continued.

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the department of environmental protection shall continue
3 to exist until the first day of July, two thousand three, unless
4 sooner terminated, continued or reestablished by act of the
5 Legislature.

CHAPTER 280

**(S. B. 269 — By Senators Bowman, Bailey, Jackson,
Redd, Rowe, Boley, Minear and Sprouse)**

[Passed April 4, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section seven, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section seven-a, all relating to continuing the office of water resources.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DEPARTMENT OF ENVIRONMENTAL PROTECTION.

§22-1-7. Offices within division.

§22-1-7a. Termination of office of water resources.

§22-1-7. Offices within division.

1 Consistent with the provisions of this article, the director
2 shall, at a minimum, maintain the following offices within the
3 division:

4 (1) The office of abandoned mine lands and reclamation,
5 which is charged, at a minimum, with administering and

6 enforcing, under the supervision of the director, the provisions
7 of article two of this chapter;

8 (2) The office of mining and reclamation, which is charged,
9 at a minimum, with administering and enforcing, under the
10 supervision of the director, the provisions of articles three and
11 four of this chapter;

12 (3) The office of air quality, which is charged, at a mini-
13 mum, with administering and enforcing, under the supervision
14 of the director, the provisions of article five of this chapter;

15 (4) The office of oil and gas, which is charged, at a mini-
16 mum, with administering and enforcing, under the supervision
17 of the director, the provisions of articles six, seven, eight, nine
18 and ten of this chapter;

19 (5) The office of water resources, which is charged, at a
20 minimum, with administering and enforcing, under the supervi-
21 sion of the director, the provisions of articles eleven, twelve,
22 thirteen and fourteen of this chapter;

23 (6) The office of waste management, which is charged, at
24 a minimum, with administering and enforcing, under the
25 supervision of the director, the provisions of articles fifteen,
26 sixteen, seventeen, eighteen, nineteen and twenty of this
27 chapter; and

28 (7) The office of explosives and blasting, which is charged,
29 at a minimum, with administering and enforcing, under the
30 supervision of the director, the provisions of article three-a of
31 this chapter.

§22-1-7a. Termination of office of water resources.

1 The office of water resources shall terminate on the first
2 day of July, two thousand two, pursuant to the provisions of
3 article ten, chapter four of this code unless sooner terminated,
4 continued or reestablished pursuant to the provisions of that
5 article.

CHAPTER 281

**(H. B. 2895 — By Delegates Douglas, Kuhn, Butcher,
Hatfield, Manchin, Prunty and Leggett)**

[Passed April 11, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section four, article seven, chapter twenty-two-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the oil and gas inspectors examining board.

Be it enacted by the Legislature of West Virginia:

That section four, article seven, 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 7. OIL AND GAS INSPECTORS' EXAMINING BOARD.

§22C-7-4. Termination date.

- 1 The oil and gas inspectors' examining board shall terminate
- 2 on the first day of July, two thousand three, 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.

CHAPTER 282

(H. B. 2894 — By Delegates Butcher, Ennis, Hatfield,
Manchin, Prunty, Yeager and Leggett)

[Passed April 11, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section four-a, article nine, chapter twenty-two-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the oil and gas conservation commission.

Be it enacted by the Legislature of West Virginia:

That section four-a, article nine, 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 9. OIL AND GAS CONSERVATION.

§22C-9-4a. Termination of commission.

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the oil and gas conservation commission shall continue to
3 exist until the first day of July, two thousand five, unless sooner
4 terminated, continued or reestablished pursuant to the provi-
5 sions of that article.

CHAPTER 283

(S. B. 498 — By Senators Bailey, Burnette, Chafin, Jackson,
McCabe, Minard, Redd, Rowe, Wooton and Boley)

[Passed March 30, 2001; in effect July 1, 2001. 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; and to further amend said article by adding thereto a new section, designated section seventeen, all relating to continuing the office of judges in workers' compensation.

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; and that said article be further amended by adding thereto a new section, designated section seventeen, all to read as follows:

ARTICLE 5. REVIEW.

§23-5-8. Designation of office of administrative law judges; powers of chief administrative law judge and said office.

§23-5-17. Termination of office of judges.

**§23-5-8. Designation of office of administrative law judges;
powers of chief administrative law judge and said
office.**

- 1 (a) The workers' compensation office of administrative law
- 2 judges previously created pursuant to chapter twelve, acts of the

3 Legislature, one thousand nine hundred ninety, second extraor-
4 dinary session, is hereby designated to be an integral part of the
5 workers' compensation system of this state. The office of
6 judges shall be under the supervision of a chief administrative
7 law judge who shall be appointed by the governor, with the
8 advice and consent of the Senate. The previously appointed
9 incumbent of that position who was serving on the second day
10 of February, one thousand nine hundred ninety-five, shall
11 continue to serve in that capacity unless subsequently removed
12 as provided for in subsection (b) of this section.

13 (b) The chief administrative law judge shall be a person
14 who has been admitted to the practice of law in this state and
15 shall also have had at least four years of experience as an
16 attorney. The chief administrative law judge's salary shall be
17 set by the compensation programs performance council created
18 in section one, article three, chapter twenty-one-a of this code.
19 Said salary shall be within the salary range for comparable chief
20 administrative law judges as determined by the state personnel
21 board created by section six, article six, chapter twenty-nine of
22 said code. The chief administrative law judge may only be
23 removed by a vote of two thirds of the members of the compen-
24 sation programs performance council and shall not be removed
25 except for official misconduct, incompetence, neglect of duty,
26 gross immorality or malfeasance and then only after he or she
27 has been presented in writing with the reasons for his or her
28 removal and is given opportunity to respond and to present
29 evidence. No other provision of this code purporting to limit the
30 term of office of any appointed official or employee or affect-
31 ing the removal of any appointed official or employee shall be
32 applicable to the chief administrative law judge.

33 (c) By and with the consent of the commissioner, the chief
34 administrative law judge shall employ administrative law
35 judges and other personnel as are necessary for the proper
36 conduct of a system of administrative review of orders issued

37 by the workers' compensation division which orders have been
38 objected to by a party and all such employees shall be in the
39 classified service of the state. Qualifications, compensation and
40 personnel practice relating to the employees of the office of
41 judges, other than the chief administrative law judge, shall be
42 governed by the provisions of the statutes, rules and regulations
43 of the classified service pursuant to article six, chapter
44 twenty-nine of this code. All such additional administrative law
45 judges shall be persons who have been admitted to the practice
46 of law in this state and shall also have had at least two years of
47 experience as an attorney. The chief administrative law judge
48 shall supervise the other administrative law judges and other
49 personnel which collectively shall be referred to in this chapter
50 as the office of judges.

51 (d) The administrative expense of the office of judges shall
52 be included within the annual budget of the workers' compensa-
53 tion division.

54 (e) Subject to the approval of the compensation programs
55 performance council pursuant to subdivisions (b) and (c),
56 section seven, article three, chapter twenty-one-a of this code,
57 the office of judges shall from time to time promulgate rules of
58 practice and procedure for the hearing and determination of all
59 objections to findings or orders of the workers' compensation
60 division pursuant to section one of this article. The office of
61 judges shall not have the power to initiate or to promulgate
62 legislative rules as that phrase is defined in article three, chapter
63 twenty-nine-a of said code.

64 (f) The chief administrative law judge shall continue to
65 have the power to hear and determine all disputed claims in
66 accordance with the provisions of this article, establish a
67 procedure for the hearing of disputed claims, take oaths,
68 examine witnesses, issue subpoenas, establish the amount of
69 witness fees, keep such records and make such reports as are

70 necessary for disputed claims and exercise such additional
 71 powers, including the delegation of such powers to administra-
 72 tive law judges or hearing examiners as may be necessary for
 73 the proper conduct of a system of administrative review of
 74 disputed claims. The chief administrative law judge shall make
 75 such reports as may be requested of him or her by the compen-
 76 sation programs performance council.

§23-5-17. Termination of office of judges.

1 The office of judges shall terminate on the first day of July,
 2 two thousand three, pursuant to the provisions of article ten,
 3 chapter four of this code unless sooner terminated, continued or
 4 reestablished pursuant to the provisions of that article.

CHAPTER 284

**(S. B. 449 — By Senators Bowman, Bailey, Burnette,
 Kessler, Minard, Redd, Rowe and Boley)**

[Passed April 3, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter twenty-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 ten, all relating to continuing the public service commission.

Be it enacted by the Legislature of West Virginia:

That section three, article one, chapter twenty-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 ten, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS.

§24-1-3. Commission membership; chairman; compensation.

§24-1-10. Termination of commission.

***§24-1-3. Commission membership; chairman; compensation.**

1 (a) The public service commission of West Virginia,
2 heretofore established, is directed by the provisions of this
3 chapter, chapter twenty-four-a, chapter twenty-four-b and
4 chapter twenty-four-d of this code. The public service commis-
5 sion may sue and be sued by that name. The public service
6 commission shall consist of three members who shall be
7 appointed by the governor with the advice and consent of the
8 Senate. The commissioners shall be citizens and residents of
9 this state and at least one of them shall be duly licensed to
10 practice law in West Virginia, with not less than ten years'
11 actual work experience in the legal profession as a member of
12 a state bar. No more than two of the commissioners shall be
13 members of the same political party. Each commissioner shall,
14 before entering upon the duties of his or her office, take and
15 subscribe to the oath provided by section five, article IV of the
16 constitution of this state. The oath shall be filed in the office of
17 the secretary of state. The governor shall designate one of the
18 commissioners to serve as chairman at the governor's will and
19 pleasure. The chairman shall be the chief administrative officer
20 of the commission. The governor may remove any commis-
21 sioner only for incompetency, neglect of duty, gross immoral-
22 ity, malfeasance in office or violation of subsection (c) of this
23 section.

24 (b) The unexpired terms of members of the public service
25 commission at the time this subsection becomes effective are
26 continued. Upon expiration of the terms, appointments are for

***Clerk's Note:** This section was also amended by H. B. 2912 (Chapter 262),
which passed subsequent to this act.

27 terms of six years, except that an appointment to fill a vacancy
28 is for the unexpired term only. The commissioners whose terms
29 are terminated by the provisions of this subsection are eligible
30 for reappointment.

31 (c) No person while in the employ of, or holding any
32 official relation to, any public utility subject to the provisions
33 of this chapter, or holding any stocks or bonds of a public utility
34 subject to the provisions of this chapter, or who is pecuniarily
35 interested in a public utility subject to the provisions of this
36 chapter, may serve as a member of the commission or as an
37 employee of the commission. Nor may any commissioner be a
38 candidate for or hold public office, or be a member of any
39 political committee, while acting as a commissioner; nor may
40 any commissioner or employee of the commission receive any
41 pass, free transportation or other thing of value, either directly
42 or indirectly, from any public utility or motor carrier subject to
43 the provisions of this chapter. In case any of the commissioners
44 becomes a candidate for any public office or a member of any
45 political committee, the governor shall remove him or her from
46 office and shall appoint a new commissioner to fill the vacancy
47 created.

48 (d) The salaries of members of the public service commis-
49 sion and the manner in which they are paid established by the
50 prior enactment of this section are continued. Effective the first
51 day of July, one thousand nine hundred ninety-six, and in light
52 of the assignment of new, substantial additional duties embrac-
53 ing new areas and fields of activity under certain legislative
54 enactments, each commissioner shall receive an annual salary
55 of sixty-five thousand dollars to be paid in monthly installments
56 from the special funds in the amounts that follow:

57 (1) From the public service commission fund collected
58 under the provisions of section six, article three of this chapter,
59 fifty-two thousand dollars;

60 (2) From the public service commission motor carrier fund
61 collected under the provisions of section six, article six, chapter
62 twenty-four-a of this code, ten thousand eight hundred fifty
63 dollars; and

64 (3) From the public service commission gas pipeline safety
65 fund collected under the provisions of section three, article five,
66 chapter twenty-four-b of this code, two thousand one hundred
67 fifty dollars.

68 In addition to this salary provided for all commissioners,
69 the chairman of the commission shall receive five thousand
70 dollars per annum to be paid in monthly installments from the
71 public service commission fund collected under the provisions
72 of section six, article three of this chapter on and after the first
73 day of July, one thousand nine hundred ninety-six.

§24-1-10. Termination of commission.

1 The public service commission shall terminate on the first
2 day of July, two thousand three, pursuant to the provisions of
3 article ten, chapter four of this code unless sooner terminated,
4 continued or reestablished pursuant to the provisions of that
5 article.

CHAPTER 285

(S. B. 271 — By Senators Bowman, Bailey, Jackson,
Redd, Rowe, Boley, Minear and Sprouse)

[Passed March 28, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section thirty-one, article three,
chapter twenty-nine of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, relating to continuing the state fire commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-31. Termination of the state commission.

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the state fire commission shall continue to exist until the
3 first day of July, two thousand four, unless sooner terminated,
4 continued or reestablished pursuant to the provisions of that
5 article.

CHAPTER 286

**(H. B. 2792 — By Delegates Douglas, Butcher, Hatfield,
Manchin, Martin, Stephens and Leggett)**

[Passed April 11, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section twenty-six, article twenty-two, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the West Virginia lottery commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. STATE LOTTERY ACT.

§29-22-26. Continuation of state lottery commission.

1 After having conducted a performance audit through its
2 joint committee on government operations, pursuant to section
3 nine, article ten, chapter four of this code, the Legislature
4 hereby finds and declares that the state lottery commission
5 should be continued and reestablished. Accordingly, notwith-
6 standing the provisions of section four, article ten, chapter four
7 of this code, the state lottery commission shall continue to exist
8 until the first day of July, two thousand six.

CHAPTER 287

(S. B. 450 — By Senators Bowman, Bailey,
Burnette, Kessler, Minard, Redd and Rowe)

[Passed April 11, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section one, article twelve, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section fifteen, all relating to continuing the board of architects.

Be it enacted by the Legislature of West Virginia:

That section one, article twelve, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be

amended and reenacted; and that said article be further amended by adding thereto a new section, designated section fifteen, all to read as follows:

ARTICLE 12. ARCHITECTS.

§30-12-1. Board of architects.

§30-12-15. Termination of board.

§30-12-1. Board of architects.

1 In order to safeguard the life, health, property and public
2 welfare of the people of this state and to protect the people
3 against the unauthorized, unqualified and improper practice of
4 architecture, the West Virginia board of architects, heretofore
5 created, shall continue in existence and shall consist of seven
6 members, five of whom shall be architects, appointed by the
7 governor by and with the advice and consent of the Senate, and
8 two of whom shall be lay members, not of the same political
9 party affiliation, appointed by the governor by and with the
10 advice and consent of the Senate. Each member who is an
11 architect shall have been engaged in the active practice of his
12 profession in the state of West Virginia for not fewer than ten
13 years previous to his appointment. The members of the board
14 in office on the date this article takes effect, in the year one
15 thousand nine hundred ninety, shall, unless sooner removed,
16 continue to serve until their respective terms expire and until
17 their successors have been appointed and have qualified. Each
18 member shall be appointed for a term of five years.

19 The board shall pay each member the same compensation
20 and expense reimbursement as is paid to members of the
21 Legislature for their interim duties as recommended by the
22 citizens legislative compensation commission and authorized
23 by law for each day or portion thereof engaged in the discharge
24 of official duties.

25 Pursuant to the provisions of chapter twenty-nine-a of this
26 code, the board, in addition to the authority, powers and duties

27 granted to it by this article, has the authority to promulgate
28 rules relating to the regulation of the practice of architecture
29 and may include rules pertaining to the registration of archi-
30 tects. Any disciplinary proceedings held by the board shall be
31 held in accordance with the provisions of the administrative
32 procedures act for contested cases pursuant to the provisions of
33 article five of said chapter.

§30-12-15. Termination of board.

1 The board of architects shall terminate on the first day of
2 July, two thousand two, pursuant to the provisions of article ten,
3 chapter four of this code, unless sooner terminated, continued
4 or reestablished pursuant to the provisions of that article.

CHAPTER 288

(S. B. 270 — By Senators Bowman, Bailey, Jackson,
Redd, Rowe, Boley, Minear and Sprouse)

[Passed April 2, 2001; in effect July 1, 2001. Approved by the Governor.]

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:

ARTICLE 34. BOARD OF RESPIRATORY CARE PRACTITIONERS.

§30-34-17. Termination.

1 The board provided for in this article shall terminate
2 pursuant to the provisions of article ten, chapter four of this
3 code on the first day of July, two thousand seven, unless
4 continued pursuant to the provisions of that article by legisla-
5 tion enacted prior to the termination date.

CHAPTER 289

(H. B. 2791 — By Delegates Douglas, Kuhn, Brown,
Butcher, DeLong, Prunty and Leggett)

[Passed April 3, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article thirty-seven, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the massage therapy licensing board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 37. MASSAGE THERAPISTS.**§30-37-12. Termination of board.**

1 The massage therapy licensure board shall be terminated
2 pursuant to the provisions of article ten, chapter four of this
3 code, on the first day of July, two thousand three, unless sooner
4 terminated, continued or reestablished pursuant to the provi-
5 sions of such article.

CHAPTER 290

(S. B. 497 — By Senators Bailey, Burnette, Chafin, Jackson,
McCabe, Minard, Redd, Rowe, Wooton and Boley)

[Passed April 13, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section three, article twelve, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section twenty-four, all relating to continuing the real estate commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. REAL ESTATE COMMISSION, BROKERS AND SALESPERSONS.

§47-12-3. Commission created; powers generally; membership; appointment and removal of members; qualifications; terms; organization; salaries and expenses; executive director and assistants; seal; admissibility of and inspection of records.

§47-12-24. Termination of commission.

§47-12-3. Commission created; powers generally; membership; appointment and removal of members; qualifications; terms; organization; salaries and expenses;

executive director and assistants; seal; admissibility of and inspection of records.

1 There shall be a commission known as the “West Virginia
2 Real Estate Commission”, which shall be a corporation and as
3 such may sue and be sued, may contract and be contracted with
4 and shall have a common seal. The commission shall consist of
5 three persons to be appointed by the governor, by and with the
6 advice and consent of the Senate. Two of such appointees each
7 shall have been a resident and a citizen of this state for at least
8 six years prior to his or her appointment and whose vocation for
9 at least ten years shall have been that of a real estate broker or
10 real estate salesperson and the third shall be a representative of
11 the public generally. Members in office on the date this section
12 becomes effective shall continue in office until their respective
13 terms expire. The term of the members of said commission
14 shall be for four years and until their successors are appointed
15 and qualify. No more than two members of such commission
16 shall belong to the same political party. No member shall be a
17 candidate for or hold any other public office or be a member of
18 any political committee while acting as such commissioner. In
19 case any commissioner be a candidate for or hold any other
20 public office or be a member of any political committee, his or
21 her office as such commissioner shall ipso facto be vacated.
22 Members to fill vacancies shall be appointed by the governor
23 for the unexpired term. No member may be removed from
24 office by the governor except for official misconduct, incompetency,
25 neglect of duty, gross immorality or other good cause
26 shown and then only in the manner prescribed by law for the
27 removal by the governor of state elective officers. The governor
28 shall designate one member of the commission as the chairman
29 thereof and the members shall choose one of the members
30 thereof as secretary. Two members of the commission shall
31 constitute a quorum for the conduct of official business.

32 (a) The commission shall do all things necessary and
33 convenient for carrying into effect the provisions of this article
34 and may from time to time promulgate reasonable, fair and
35 impartial rules in accordance with the provisions of article
36 three, chapter twenty-nine-a of this code. The board shall pay
37 each member the same compensation and expense reimburse-
38 ment as is paid to members of the Legislature for their interim
39 duties as recommended by the citizens legislative compensation
40 commission and authorized by law for each day or portion
41 thereof engaged in the discharge of official duties.

42 (b) The commission shall employ an executive director and
43 such clerks, investigators and assistants as it shall deem
44 necessary to discharge the duties imposed by the provisions of
45 this article and to effect its purposes and the commission shall
46 determine the duties and fix the compensation of such executive
47 director, clerks, investigators and assistants, subject to the
48 general laws of the state.

49 (c) The commission shall adopt a seal by which it shall
50 authenticate its proceedings. Copies of all records and papers in
51 the office of the commission, duly certified and authenticated
52 by the seal of said commission, shall be received in evidence in
53 all courts equally and with like effect as the original. All
54 records kept in the office of the commission under authority of
55 this article shall be open to public inspection under reasonable
56 rules as shall be prescribed by the commission.

§47-12-24. Termination of commission.

1 The real estate commission shall terminate on the first day
2 of July, two thousand four, pursuant to the provisions of article
3 ten, chapter four of this code unless sooner terminated, contin-
4 ued or reestablished pursuant to the provisions of that article.

CHAPTER 291

(S. B. 268 — By Senators Bowman, Bailey and Minear)

[Passed March 30, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to repeal article thirty-three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter sixteen of said code by adding thereto a new article, designated article thirty-eight, relating to the tattoo studio business.

Be it enacted by the Legislature of West Virginia:

That article thirty-three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that chapter sixteen of said code be amended by adding thereto a new article, designated article thirty-eight, to read as follows:

ARTICLE 38. TATTOO STUDIO BUSINESS.

§16-38-1. Definitions.

§16-38-2. Studio sanitation.

§16-38-3. Operation standards.

§16-38-4. Facilities and equipment.

§16-38-5. Disposal of waste.

§16-38-6. Registration requirements; inspections by local or regional boards of health; permit fees.

§16-38-7. Violations and penalties.

§16-38-1. Definitions.

1 (a) "Adequate ventilation" means a free and unrestricted
2 circulation of fresh air throughout the tattoo studio and the
3 expulsion of foul or stagnant air.

4 (b) "Minor" means any person under the age of eighteen
5 years.

6 (c) "Tattoo" means to mark or color the skin by pricking in
7 coloring matter so as to form indelible marks or figures or by
8 the production of scars.

9 (d) "Tattoo studio" means any room or space where
10 tattooing is practiced or where the business of tattooing or any
11 part thereof is conducted.

12 (e) "Antibacterial solution" means any solution used to
13 retard the growth of bacteria approved for application to human
14 skin and includes all products so labeled.

15 (f) "Germicidal solution" means any solution which
16 destroys germs and is so labeled.

17 (g) "Sterilization" means holding in an autoclave for
18 twenty-five minutes at fifteen pounds pressure at a temperature
19 of two hundred fifty degrees Fahrenheit or one hundred twenty-
20 one degrees Celsius.

§16-38-2. Studio sanitation.

1 (a) The tattoo artist's hands shall be washed and then air
2 blown or dried by single-use towel prior to beginning work on
3 each person or when interrupted in the process of working on
4 a person. In addition, disposable latex examination gloves shall
5 be worn by the tattoo artist during the tattooing process. The
6 gloves shall be changed and properly disposed of each time
7 there is an interruption in the application of the tattoo, each

8 time the gloves become torn or punctured or whenever the
9 ability of the gloves to function as a barrier is compromised.

10 (b) Cabinets for the storage of instruments, dyes, pigments,
11 single-use articles, carbon, stencils and other utensils shall be
12 provided for each operator and shall be maintained in a sanitary
13 manner.

14 (c) Bulk single use articles shall be commercially packaged
15 and handled in such a way as to protect them from contamina-
16 tion. Storage of single-use articles may not be in toilet rooms or
17 in vestibules of toilet rooms nor under nonpotable water lines
18 or exposed sewer lines.

19 (d) Work tables and chairs or benches shall be provided for
20 each tattoo artist. The surface of all work tables and chairs or
21 benches shall be constructed of material which is smooth, light
22 colored, nonabsorbent, corrosive-resistant and easily sanitized.
23 The work tables and chairs or benches shall be sanitized with a
24 germicidal solution after each tattoo application. All existing
25 tattoo studios on the effective date of the administrative
26 regulation shall be exempt from the required color of the work
27 table.

28 (e) All materials applied to human skin shall be from
29 single-use articles or transferred from bulk containers to single-
30 use containers and shall be disposed of after each use.

31 (f) No pets, including working dogs, guide dogs or security
32 dogs from a certified trainer, may be permitted in a tattoo studio
33 workroom as defined in subsection (b), section four of this
34 article.

§16-38-3. Operation standards.

1 (a) *Records.* –

2 (1) Proper records of tattoos administered shall be main-
3 tained for each patron by the holder of the studio registration;

4 (2) A record shall be prepared for each patron prior to any
5 procedure being performed and shall include the patron's name
6 and signature, address, age, date tattooed, design of the tattoo,
7 location of the tattoo on the patron's body and the name of the
8 tattoo artist who performed the work;

9 (3) Record entries shall be in ink or indelible pencil and
10 shall be available for examination by the inspecting authorities
11 provided in section six of this article;

12 (4) Before tattoo administration, the owner or tattoo artist
13 shall discuss with the patron the risks involved in the tattoo
14 requested and the possible complications, which shall be
15 entered in the record;

16 (5) All records required by this section shall be kept on file
17 for five years by the holder of the studio registration for the
18 studio in which the tattoo was performed.

19 (b) *Consent.* –

20 (1) Prior written consent for tattooing of minors shall be
21 obtained from one parent or guardian;

22 (2) All written consents shall be kept on file for five years
23 by the holder of the studio registration for the tattoo studio in
24 which the tattoo was performed;

25 (3) The person receiving the tattoo shall attest to the fact
26 that he or she is not intoxicated or under the influence of drugs
27 or alcohol.

28 (c) *Tattooing procedures.* –

29 (1) Printed instructions on the care of the skin after tattoo-
30 ing shall be given to each patron as a precaution to prevent
31 infection;

32 (2) A copy of the printed instructions shall be posted in a
33 conspicuous place, clearly visible to the person being tattooed;

34 (3) Each tattoo artist shall wear a clean outer garment, i.e.,
35 apron, smock, T-shirt, etc.;

36 (4) Tattoo artists who are experiencing diarrhea, vomiting,
37 fever, rash, productive cough, jaundice, draining or open skin
38 infections such as boils which could be indicative of more
39 serious conditions such as, but not limited to, impetigo, scabies,
40 hepatitis-b, HIV or AIDS shall refrain from tattooing activities
41 until such time as they are no longer experiencing or exhibiting
42 the aforementioned symptoms;

43 (5) Before working on each patron, the fingernails and
44 hands of the tattoo artist shall be thoroughly washed and
45 scrubbed with hot running water, antibacterial soap and an
46 individual hand brush that is clean and in good repair;

47 (6) The tattoo artist's hands shall be air blown dried or
48 dried by a single-use towel. In addition, disposable latex
49 examination gloves shall be worn during the tattoo process. The
50 gloves shall be changed each time there is an interruption in the
51 tattoo application, the gloves become torn or punctured or
52 whenever their ability to function as a barrier is compromised;

53 (7) Only sterilized or single-use, disposable razors shall be
54 used to shave the area to be tattooed;

55 (8) Immediately prior to beginning the tattoo procedure, the
56 affected skin area shall be treated with an antibacterial solution;

57 (9) If an acetate stencil is used by a tattoo artist for transfer-
58 ring the design to the skin, the acetate stencil shall be thor-
59 oughly cleaned and rinsed in a germicidal solution for at least
60 twenty minutes and then dried with sterile gauze or dried in the
61 air on a sanitized surface after each use;

62 (10) If a paper stencil is used by a tattoo artist for transfer-
63 ring the design to the skin, the paper stencil shall be single-use
64 and disposable;

65 (11) If the design is drawn directly onto the skin, the design
66 shall be applied with a single-use article only.

67 (d) *Dyes or pigments.* –

68 (1) Only nontoxic sterile dyes or pigments shall be used and
69 shall be prepared in sterilized or disposable single-use contain-
70 ers for each patron;

71 (2) After tattooing, the unused dye or pigment in the single-
72 use containers shall be discarded along with the container;

73 (3) All dyes or pigments used in tattooing shall be from
74 professional suppliers specifically providing dyes or pigments
75 for the tattooing of human skin.

76 (e) *Sterilization of needles.* –

77 (1) A set of individual, sterilized needles shall be used for
78 each patron;

79 (2) No less than twenty-four sets of sterilized needles and
80 tubes shall be on hand for the entire day or night operation.
81 Unused sterilized instruments shall be reesterilized at intervals
82 of no more than six months from the date of the last steriliza-
83 tion;

84 (3) Used, nondisposable instruments shall be kept in a
85 separate, puncture resistant container until brush scrubbed in
86 hot water and soap and then sterilized by autoclaving;

87 (4) If used instruments are ultrasonically cleaned prior to
88 being placed in the used instrument container, they shall be
89 ultrasonically cleaned and then rinsed under running hot water
90 prior to being placed in the used instrument container;

91 (5) The ultrasonic unit shall be sanitized daily with a
92 germicidal solution;

93 (6) If used instruments are not ultrasonically cleaned prior
94 to being placed in the used instrument container, they shall be
95 kept in a germicidal or soap solution until brush scrubbed in hot
96 water and soap and then sterilized by autoclaving;

97 (7) All nondisposable instruments, including the needle
98 tubes, shall be sterilized and shall be handled and stored in such
99 a manner as to prevent contamination. Instruments to be
100 sterilized shall be sealed in bags made specifically for the
101 purpose of autoclave sterilization and shall include the date of
102 sterilization. If nontransparent sterilization bags are utilized, the
103 bag shall also list the contents;

104 (8) Autoclave sterilization bags, with a color code indicator
105 which changes color upon proper steam sterilization, shall be
106 utilized during the autoclave sterilization process;

107 (9) Instruments shall be placed in the autoclave in such a
108 manner as to allow live steam to circulate around them;

109 (10) No rusty, defective or faulty instruments shall be kept
110 in the studio.

111 (f) *Aftercare of tattoo.* –

112 The completed tattoo shall be washed with a single-use
113 towel saturated with an antibacterial solution.

§16-38-4. Facilities and equipment.

1 (a) *General physical environment.* –

2 (1) Tattoo studios shall have at least fifty footcandles of
3 light and adequate ventilation. Walls and ceilings shall be
4 painted a light color;

5 (2) The floor of the tattoo workroom shall be constructed of
6 impervious material. The floor shall be swept and wet-mopped
7 daily. Floors, walls or ceilings shall not be swept or cleaned
8 while tattooing is in operation;

9 (3) Convenient, clean and sanitary toilet and hand-washing
10 facilities shall be made accessible to customers;

11 (4) The building and equipment shall be maintained in a
12 state of good repair at all times. The studio premises shall be
13 kept clean, neat and free of litter and rubbish.

14 (b) *Workroom.* –

15 (1) Each tattoo studio shall have a workroom separate from
16 a waiting room or any room or rooms used for any other
17 purpose. The workroom may not be used as a corridor for
18 access to other rooms. Patrons or customers shall be tattooed
19 only in the workroom;

20 (2) The workroom shall be equipped with hot and cold
21 running water, with one sink or basin per artist operating at the
22 same time;

23 (3) The sinks and basins shall be for the exclusive use of the
24 tattoo artists for washing their hands and preparing customers
25 for tattooing. They shall be equipped with foot, wrist or single-

26 lever action controls, soap, a germicidal solution, single-use
27 towels and individual hand brushes clean and in good repair for
28 each tattoo artist. All plumbing shall be in compliance with
29 industry standards;

30 (4) Persons may not consume any food or drink nor smoke
31 in the workroom.

§16-38-5. Disposal of waste.

1 The tattoo studio operator shall comply with rules promul-
2 gated by the commissioner of the bureau of public health
3 regarding the disposal of medical wastes.

§16-38-6. Registration requirements; inspections by local or regional boards of health; permit fees.

1 (a) Tattoo studios in West Virginia shall obtain a West
2 Virginia business registration certificate and shall register with
3 their local or regional board of health.

4 (b) Each local or regional board of health shall conduct
5 annual inspections of each tattoo studio to determine compli-
6 ance with this article. Every person, firm or corporation
7 operating a tattoo studio in West Virginia shall apply to their
8 local or regional board of health for the inspection. The local or
9 regional boards of health shall attempt to conduct the inspec-
10 tions within ten days of the receipt of the request for inspection:
11 *Provided*, That if it is impracticable for the local or regional
12 board of health to conduct the investigation within ten days
13 after receiving the application, the boards may issue to the
14 applicant a temporary operating permit which shall be valid for
15 thirty days or until a regular inspection is made, whichever
16 occurs first.

17 (c) Upon a determination by the inspecting authority that
18 any tattoo studio is not in compliance with the provisions of this
19 article, the inspection authority shall have the power to order

20 the tattoo studio to cease operations until a time as the inspect-
21 ing authority determines that the studio is in compliance.

22 (d) Upon a determination by the inspecting authority that
23 the tattoo studio is in compliance with the provisions of this
24 article, there shall be issued to the studio an operating permit
25 that shall be posted in a conspicuous place, clearly visible to the
26 general public.

27 (e) The fee for the issuance of an operating permit issued
28 pursuant to this article shall be two hundred dollars and shall be
29 paid by the tattoo studio receiving the permit. The fee shall be
30 collected by and paid to the local or regional boards of health.

§16-38-7. Violations and penalties.

1 Any owner of a tattoo studio who does not obtain a West
2 Virginia business registration certificate, who does not register
3 with their local or regional board of health or who fails to
4 request an inspection pursuant to section six of this article shall
5 be guilty of a misdemeanor and, upon conviction thereof, for a
6 first offense, may have all of the tattoo equipment and para-
7 phernalia confiscated and shall be fined one hundred dollars.
8 For a second offense, which is a misdemeanor, the owner may
9 have all of the tattoo equipment and paraphernalia confiscated
10 and shall be fined not less than five hundred dollars nor more
11 than one thousand dollars or confined in a county or regional
12 jail not less than ten days nor more than one year, or both fined
13 and imprisoned. For a third offense, which is a misdemeanor,
14 the owner shall have all the tattoo equipment and paraphernalia
15 confiscated, shall be fined not less than one thousand dollars
16 nor more than five thousand dollars, or confined in a county or
17 regional jail not less than thirty days nor more than one year, or
18 both fined and imprisoned.

CHAPTER 292

**(Com. Sub. for H. B. 2968 — By Delegates
Michael, Shaver, Williams and Evans)**

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-a; and to amend and reenact section two-o, article thirteen of said chapter, all relating to clarifying and specifying the tax treatment of certain wind power projects; specifying the valuation of wind power turbines and related towers for property tax purposes; and specifying the taxable generating capacity of generating units used for the production of electricity by wind for state business and occupation tax purposes.

Be it enacted by the Legislature of West Virginia:

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

Article

6A. Pollution Control Facilities Tax Treatment.

13. Business and Occupation Tax.

ARTICLE 6A. POLLUTION CONTROL FACILITIES TAX TREATMENT.

§11-6A-5a. Wind power projects.

1 (a) Notwithstanding any other provisions of this article, a
2 power project designed, constructed or installed to convert wind
3 into electrical energy shall be subject to the provisions of this
4 section.

5 (b) Each wind turbine installed at a wind power project and
6 each tower upon which the turbine is affixed shall be consid-
7 ered to be personal property that is a pollution control facility
8 for purposes of this article and all of the value associated with
9 the wind turbine and tower shall be accorded salvage valuation.
10 All personal property at a wind power project other than a wind
11 turbine and tower shall be valued without regard to this article.

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-20. Business of generating or producing or selling electric- ity on and after the first day of June, one thou- sand nine hundred ninety-five; definitions; rate of tax; exemptions; effective date.

1 (a) *Definitions.* — As used in this section:

2 (1) “Average four-year generation” is computed by dividing
3 by four the sum of a generating unit’s net generation, expressed
4 in kilowatt hours, for calendar years one thousand nine hundred
5 ninety-one, one thousand nine hundred ninety-two, one thou-
6 sand nine hundred ninety-three, and one thousand nine hundred
7 ninety-four. For any generating unit which was newly installed
8 and placed into commercial operation after the first day of
9 January, one thousand nine hundred ninety-one and prior to the
10 effective date of this section, “average four-year generation” is
11 computed by dividing the unit’s net generation for the period
12 beginning with the month in which the unit was placed into
13 commercial operation and ending with the month preceding the
14 effective date of this section by the number of months in the
15 period and multiplying the resulting amount by twelve with the

16 result being a representative twelve-month average of the unit's
17 net generation while in an operational status.

18 (2) "Capacity factor" means a fraction, the numerator of
19 which is average four-year generation and the denominator of
20 which is the maximum possible annual generation.

21 (3) "Generating unit" means a mechanical apparatus or
22 structure which through the operation of its component parts is
23 capable of generating or producing electricity and is regularly
24 used for this purpose.

25 (4) "Inactive reserve" means the removal of a generating
26 unit from commercial service for a period of not less than
27 twelve consecutive months as a result of lack of need for
28 generation from the generating unit or as a result of the require-
29 ments of state or federal law or the removal of a generating unit
30 from commercial service for any period as a result of any
31 physical exigency which is beyond the reasonable control of the
32 taxpayer.

33 (5) "Maximum possible annual generation" means the
34 product, expressed in kilowatt hours, of official capability times
35 eight thousand seven hundred sixty hours.

36 (6) "Official capability" means the nameplate capacity
37 rating of a generating unit expressed in kilowatts.

38 (7) "Peaking unit" means a generating unit designed for the
39 limited purpose of meeting peak demands for electricity or
40 filling emergency electricity requirements.

41 (8) "Retired from service" means the removal of a generat-
42 ing unit from commercial service for a period of at least twelve
43 consecutive months with the intent that the unit will not
44 thereafter be returned to active service.

45 (9) "Taxable generating capacity" means the product,
46 expressed in kilowatts, of the capacity factor times the official
47 capability of a generating unit, subject to the modifications set
48 forth in subdivisions (2) and (3), subsection (c) of this section.

49 (10) "Net generation" for a period means the kilowatt hours
50 of net generation available for sale generated or produced by
51 the generating unit in this state during the period less the
52 following:

53 (A) Twenty-one twenty-sixths of the kilowatt hours of
54 electricity generated at the generating unit and sold during the
55 period to a plant location of a customer engaged in manufactur-
56 ing activity if the contract demand at the plant location exceeds
57 two hundred thousand kilowatts per hour in a year or where the
58 usage at the plant location exceeds two hundred thousand
59 kilowatts per hour in a year;

60 (B) Twenty-one twenty-sixths of the kilowatt hours of
61 electricity produced or generated at the generating unit during
62 the period by any person producing electric power and an
63 alternative form of energy at a facility located in this state
64 substantially from gob or other mine refuse;

65 (C) The total kilowatt hours of electricity generated at the
66 generating unit exempted from tax during the period by
67 subsection (b), section two-n of this article.

68 (b) *Rate of tax.* -- Upon every person engaging or continu-
69 ing within this state in the business of generating or producing
70 electricity for sale, profit or commercial use, either directly or
71 indirectly through the activity of others, in whole or in part, or
72 in the business of selling electricity to consumers, or in both
73 businesses, the tax imposed by section two of this article shall
74 be equal to:

75 (1) For taxpayers who generate or produce electricity for
76 sale, profit or commercial use, the product of twenty-two
77 dollars and seventy-eight cents multiplied by the taxable
78 generating capacity of each generating unit in this state owned
79 or leased by the taxpayer, subject to the modifications set forth
80 in subsection (c) of this section: *Provided*, That with respect to
81 each generating unit in this state which has installed a flue gas
82 desulfurization system, the tax imposed by section two of this
83 article shall, on and after the thirty-first day of January, one
84 thousand nine hundred ninety-six, be equal to the product of
85 twenty dollars and seventy cents multiplied by the taxable
86 generating capacity of the units, subject to the modifications set
87 forth in subsection (c) of this section: *Provided, however*, That
88 with respect to kilowatt hours sold to or used by a plant location
89 engaged in manufacturing activity in which the contract
90 demand at the plant location exceeds two hundred thousand
91 kilowatts per hour per year or if the usage at the plant location
92 exceeds two hundred thousand kilowatts per hour in a year, in
93 no event shall the tax imposed by this article with respect to the
94 sale or use of the electricity exceed five hundredths of one cent
95 times the kilowatt hours sold to or used by a plant engaged in
96 a manufacturing activity; and

97 (2) For taxpayers who sell electricity to consumers in this
98 state that is not generated or produced in this state by the
99 taxpayer, nineteen hundredths of one cent times the kilowatt
100 hours of electricity sold to consumers in this state that were not
101 generated or produced in this state by the taxpayer, except that
102 the rate shall be five hundredths of one cent times the kilowatt
103 hours of electricity not generated or produced in this state by
104 the taxpayer which is sold to a plant location in this state of a
105 customer engaged in manufacturing activity if the contract
106 demand at such plant location exceeds two hundred thousand
107 kilowatts per hour per year or if the usage at such plant location
108 exceeds two hundred thousand kilowatts per hour in a year. The
109 measure of tax under this subdivision (2) shall be equal to the

110 total kilowatt hours of electricity sold to consumers in the state
111 during the taxable year, that were not generated or produced in
112 this state by the taxpayer, to be determined by subtracting from
113 the total kilowatt hours of electricity sold to consumers in the
114 state the net kilowatt hours of electricity generated or produced
115 in the state by the taxpayer during the taxable year. For the
116 purposes of this subdivision, net kilowatt hours of electricity
117 generated or produced in this state by the taxpayer includes the
118 taxpayer's pro rata share of electricity generated or produced in
119 this state by a partnership or limited liability company of which
120 the taxpayer is a partner or member. The provisions of this
121 subdivision (2) shall not apply to those kilowatt hours exempt
122 under subsection (b), section two-n of this article. Any person
123 taxable under this subdivision (2) shall be allowed a credit
124 against the amount of tax due under this subdivision (2) for any
125 electric power generation taxes or a tax similar to the tax
126 imposed by subdivision (1) of this subsection (b) paid by the
127 taxpayer with respect to the electric power to the state in which
128 the power was generated or produced. The amount of credit
129 allowed may not exceed the tax liability arising under this
130 subdivision (2) with respect to the sale of the power.

131 (c) The following provisions are applicable to taxpayers
132 subject to tax under subdivision (1), subsection (b) of this
133 section:

134 (1) *Retired units; inactive reserve.* — If a generating unit is
135 retired from service or placed in inactive reserve, a taxpayer
136 may not be liable for tax computed with respect to the taxable
137 generating capacity of the unit for the period that the unit is
138 inactive or retired. The taxpayer shall provide written notice to
139 the joint committee on government and finance, as well as to
140 any other entity as may be otherwise provided by law, eighteen
141 months prior to retiring any generating unit from service in this
142 state.

143 (2) *New generating units.* — If a new generating unit, other
144 than a peaking unit, is placed in initial service on or after the
145 effective date of this section, the generating unit's taxable
146 generating capacity shall equal forty percent of the official
147 capability of the unit: *Provided*, That the taxable generating
148 capacity of a county or municipally-owned generating unit shall
149 equal zero percent of the official capability of the unit and the
150 taxable generating capacity of a generating unit utilizing a
151 turbine powered primarily by wind shall equal five percent of
152 the official capability of the unit.

153 (3) *Peaking units.* — If a peaking unit is placed in initial
154 service on or after the effective date of this section, the generat-
155 ing unit's taxable generating capacity shall equal five percent
156 of the official capability of the unit: *Provided*, That the taxable
157 generating capacity of a county or municipally-owned generat-
158 ing plant shall equal zero percent of the official capability of the
159 unit.

160 (4) *Transfers of interests in generating units.* — If a
161 taxpayer acquires an interest in a generating unit, the taxpayer
162 shall include the computation of taxable generating capacity of
163 the unit in the determination of the taxpayer's tax liability as of
164 the date of the acquisition. Conversely, if a taxpayer transfers
165 an interest in a generating unit, the taxpayer may not for periods
166 thereafter be liable for tax computed with respect to the taxable
167 generating capacity of the transferred unit.

168 (5) *Proration, allocation.* — The tax commissioner shall
169 promulgate rules in conformity with the provisions of article
170 three, chapter twenty-nine-a of this code to provide for the
171 administration of this section and to equitably prorate taxes for
172 a taxable year in which a generating unit is first placed in
173 service, retired or placed in inactive reserve, or in which a
174 taxpayer acquires or transfers an interest in a generating unit, to
175 equitably allocate and reallocate adjustments to net generation,

176 and to equitably allocate taxes among multiple taxpayers with
177 interests in a single generating unit, it being the intent of the
178 Legislature to prohibit multiple taxation of the same taxable
179 generating capacity.

180 So as to provide for an orderly transition with respect to the
181 rate making effect of this section, those electric light and power
182 companies which, as of the effective date of this section, are
183 permitted by the West Virginia public service commission to
184 utilize deferred accounting for purposes of recovery from
185 ratepayers of any portion of business and occupation tax
186 expense under this article shall be permitted, until the time that
187 action pursuant to a rate application or order of the commission
188 provides for appropriate alternative rate making treatment for
189 such expense, to recover the tax expense imposed by this
190 section by means of deferred accounting to the extent that the
191 tax expense imposed by this section exceeds the level of
192 business and occupation tax under this article currently allowed
193 in rates.

194 (6) *Electricity generated by manufacturer or affiliate for*
195 *use in manufacturing activity.* -- When electricity used in a
196 manufacturing activity is generated in this state by the person
197 who owns the manufacturing facility in which the electricity is
198 used and the electricity generating unit or units producing the
199 electricity so used are owned by the manufacturer, or by a
200 member of the manufacturer's controlled group, as defined in
201 section 267 of the Internal Revenue Code of 1986, as amended,
202 the generation of the electricity may not be taxable under this
203 article: *Provided*, That any electricity generated or produced at
204 the generating unit or units which is sold or used for purposes
205 other than in the manufacturing activity shall be taxed under
206 this section and the amount of tax payable shall be adjusted to
207 be equal to an amount which is proportional to the electricity
208 sold for purposes other than the manufacturing activity. The
209 department of tax and revenue shall promulgate rules in

210 accordance with article three, chapter twenty-nine-a of the
211 code: *Provided, however,* That the rules shall be promulgated
212 as emergency rules.

213 (d) Beginning the first day of June, one thousand nine
214 hundred ninety-five, electric light and power companies that
215 actually paid tax based on the provisions of subdivision (3),
216 subsection (a), section two-d of this article or section two-m of
217 this article for every taxable month in one thousand nine
218 hundred ninety-four shall determine their liability for payment
219 of tax under this article in accordance with subdivisions (1) and
220 (2) of this subsection. All other electric light and power
221 companies shall determine their liability for payment of tax
222 under this article exclusively under this section beginning the
223 first day of June, one thousand nine hundred ninety-five and
224 thereafter.

225 (1) If for taxable months beginning on or after the first day
226 of June, one thousand nine hundred ninety-five, liability for tax
227 under this section is equal to or greater than the sum of the
228 power company's liability for payment of tax under subdivision
229 (3), subsection (a), section two-d of this article and this section,
230 then the company shall pay the tax due under this section and
231 not the tax due under subdivision (3), subsection (a), section
232 two-d of this article and section two-m of this article. If tax
233 liability under this section is less then the tax shall be paid
234 under subdivision (3), subsection (a), section two-d of this
235 article and section two-m and the tax due under this section
236 may not be paid.

237 (2) Notwithstanding subdivision (1) of this subsection, for
238 taxable years beginning on or after the first day of January, one
239 thousand nine hundred ninety-eight, all electric and light power
240 companies shall determine their liability for payment of tax
241 under this article exclusively under this section.

CHAPTER 293

(Com. Sub. for S. B. 463 — By Senators Helmick and Fanning)

[Passed April 13, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two-f, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one; and to amend article thirteen-a of said chapter by adding thereto a new section, designated section three-e, all relating to taxes imposed on subsequent coal products; outlining the tax imposed on producing synthetic fuel from coal; dedicating a certain amount of this tax to the counties where produced; outlining the imposition of a privilege tax on extracting and processing material from a refuse, gob pile or other sources of waste coal to produce coal; exempting electrical co-generation plants; and dedicating this tax to certain county commissions for use in economic development and infrastructure improvements.

Be it enacted by the Legislature of West Virginia:

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

Article

13. Business and Occupation Tax.

13A. Severance Taxes.

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-2f. Manufacturing or producing synthetic fuel from coal.

1 (a) *Rate and measure of tax.* — Upon every person engag-
2 ing or continuing within this state in the business of manufac-
3 turing or producing synthetic fuel from coal for sale, profit or
4 commercial use, either directly or through the activity of others,
5 in whole or in part, the amount of the tax shall be equal to fifty
6 cents per ton of synthetic fuel manufactured or produced for
7 sale, profit or commercial use. When a fraction of a ton is
8 included in the measure of tax, the rate of tax as to that fraction
9 of a ton shall be proportional. The measure of tax is the total
10 number of tons of synthetic fuel product manufactured or
11 produced in this state for sale, profit or commercial use,
12 regardless of the place of sale or the fact that deliveries may be
13 made to points outside this state. Liability for payment of this
14 tax shall accrue when the synthetic fuel product is sold by the
15 manufacturer or producer, determined by when the producer or
16 manufacturer recognizes gross receipts for federal income tax
17 purposes. When there is no sale of the synthetic fuel product,
18 liability for tax shall accrue when the synthetic fuel product is
19 shipped from the manufacturing facility for commercial use,
20 whether by the taxpayer or by a related party, except as
21 otherwise provided in legislative rules promulgated by the tax
22 commissioner as provided in article three, chapter twenty-nine-
23 a of this code.

24 (b) *Definitions.* — For purposes of this section:

25 (1) “Fuel” means material that produces usable heat upon
26 combustion.

27 (2) “Fuel manufactured or produced from coal” means
28 liquid, gaseous or solid fuels produced from coal, including, but
29 not limited to, such fuels when used as feedstocks.

30 (3) “Synthetic fuel manufactured or produced from coal” or
31 “synthetic fuel” means fuel manufactured or produced from
32 coal for which credit is allowable for federal income tax
33 purposes under section twenty-nine of the United States Internal
34 Revenue Code, as in effect on the effective date of this section,
35 or for which credit would have been allowable if the synthetic
36 fuel was produced from a facility, or expansion of a facility,
37 that meets the requirement of section twenty-nine of the
38 Internal Revenue Code or would have met the requirements on
39 the effective date of this section. “Synthetic fuel” does not
40 include coke or coke gas.

41 (4) “Ton” means two thousand pounds.

42 (c) *Credits not allowed against tax.* — When determining
43 the amount of tax due under this section, no credit shall be
44 allowed under section three-c or three-d of this article or under
45 any other article of this chapter or chapter of this code unless it
46 is expressly provided that the credit applies to the business and
47 occupation tax on the privilege of manufacturing or producing
48 synthetic fuel.

49 (d) *Emergency rule authorized.* — The tax commissioner
50 may, in the commissioner’s discretion, promulgate an emer-
51 gency rule, as provided in article three, chapter twenty-nine-a
52 of this code, that clarifies, explains or implements the provi-
53 sions of this section.

54 (e) *Dedication of proceeds.* — The net amount of tax
55 collected for exercise of the privilege taxed under this section
56 shall be deposited into the “Mining and Reclamation Operations
57 Fund” created in the state treasury by section thirty-two, article
58 three, chapter twenty-two of this code: *Provided,* That the net
59 amount of tax collected in excess of four million dollars, not to
60 exceed two million dollars, shall be dedicated to the counties in
61 which the synthetic fuel plants are domiciled and are producing
62 as of the first day of April, two thousand one: *Provided,*

63 *however*, That the county shall use ninety percent of the funds
64 for use in infrastructure improvement and ten percent of the
65 funds for economic development: *Provided further*, That the net
66 amount of tax collected in excess of six million dollars, not to
67 exceed two million dollars, shall be equally divided among the
68 remaining counties having no synthetic fuel plants domiciled
69 and producing within their borders as of the first day of April,
70 two thousand one: *And provided further*, That the county shall
71 first use such moneys for regional jail and correctional authority
72 and county jail expenses with any remainder being subject to
73 county discretion: *And provided further*, That the net amount of
74 tax collected in excess of eight million dollars shall be dedi-
75 cated to the general revenue fund: *And provided further*, That
76 funding provided by taxes pursuant to this section and section
77 three-e, article thirteen-a of this chapter shall be administered
78 by the office of community development.

79 (f) *Effective date.* — This section shall take effect upon
80 enactment and the measure of tax shall include all synthetic fuel
81 sold or shipped after the first day of January, two thousand one,
82 regardless of when the synthetic fuel was manufactured or
83 produced in this state.

84 (g) *Expiration date.* — The tax imposed in this section shall
85 expire and become void and of no effect for synthetic fuels
86 produced after the thirtieth day of June, two thousand seven.

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-3e. Imposition of tax on privilege of extracting and recovering material from refuse, gob piles or other sources of waste coal to produce coal.

1 (a) The Legislature hereby finds and declares the following:

2 (1) That some mining operations in this state process coal
3 to create a saleable clean coal product.

4 (2) That the by-product created from processing coal is
5 commonly deposited in what are known as refuse or gob piles.

6 (3) That, as a result of technological developments and
7 other factors, the material contained in some refuse or gob piles
8 located in this state can be recovered and further processed to
9 produce saleable clean coal.

10 (4) That, under the existing laws of this state, coal produced
11 from processing material contained in refuse, gob piles, slurry
12 ponds, pond fines or other sources of waste coal would be
13 subject to the annual privilege tax imposed on the severance of
14 coal pursuant to section three, article thirteen-a of this chapter
15 and the minimum severance tax imposed by section three,
16 article twelve-b of this chapter.

17 Based on the foregoing findings, the Legislature concludes
18 that an incentive to extracting and recovering material con-
19 tained in refuse, gob piles and other sources of waste coal
20 located in this state and, subsequently processing, washing and
21 preparing this material to produce coal should be implemented
22 to encourage the production of this coal from refuse or gob
23 piles located in this state.

24 (b) *Imposition of tax.* – In lieu of: (i) The annual privilege
25 tax imposed on the severance of coal pursuant to section three,
26 article thirteen-a of this chapter; and (ii) the minimum sever-
27 ance tax imposed by section three, article twelve-b of this
28 chapter for the privilege of engaging or continuing within this
29 state in the business of extracting and recovering material from
30 a refuse, gob pile or other sources of waste coal and, subse-
31 quently, processing, washing and preparing this extracted or
32 recovered material to produce coal for sale, profit or commer-
33 cial use, there is hereby levied and shall be collected from every
34 person exercising that privilege an annual privilege tax.

35 (c) *Rate and measure of tax.* – The tax imposed in subsec-
36 tion (b) of this section shall be two and one-half percent of the
37 gross value of the coal so produced, as shown by the gross
38 proceeds derived from the sale thereof by the producer, except
39 as otherwise provided in this article.

40 (d) *Tax in addition to other taxes.* – The tax imposed by this
41 section applies to all persons extracting and recovering material
42 from refuse, gob piles or other sources of waste coal located in
43 this state and, subsequently, processing, washing and preparing
44 this extracted and recovered material to produce coal for sale,
45 profit or commercial use and shall be in addition to all other
46 taxes imposed by law: *Provided*, That the tax imposed by this
47 section is in lieu of the tax imposed pursuant to section three,
48 article thirteen-a of this chapter and the tax imposed by section
49 three, article twelve-b of this chapter: *Provided, however*, That
50 funding provided by taxes pursuant to this section and section
51 two-f, article thirteen of this chapter shall be administered by
52 the office of community development.

53 (e) *Exemption.* – That the tax imposed in subsection (b)
54 shall not apply to any electrical power co-generation plant
55 burning material from its wholly owned refuse or gob pile.

56 (f) *Dedication of taxes collected.* – The taxes collected
57 under the provisions of this section are hereby dedicated to the
58 county commissions of the counties in which the refuse, gob
59 piles or other sources of waste coal are located for use in
60 economic development and infrastructure improvements:
61 *Provided*, That the county shall use ninety percent of the funds
62 for use in infrastructure improvement and ten percent of the
63 funds for economic development.

CHAPTER 294

(S. B. 549 — By Senators Ross, Sharpe, Anderson and McCabe)

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article thirteen-d, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the tax commissioner to waive the requirement that prior approval be given by the tax commissioner for a transfer or sale of property with respect to which a tax credit has been allowed under said article so the transfer or sale will not be treated as a premature disposition of the property under the provisions of section six of said article.

Be it enacted by the Legislature of West Virginia:

That section seven, article thirteen-d, 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 13D. TAX CREDITS FOR INDUSTRIAL EXPANSION AND REVITALIZATION, RESEARCH AND DEVELOPMENT PROJECTS, CERTAIN HOUSING DEVELOPMENT PROJECTS, MANAGEMENT INFORMATION SERVICES FACILITIES, INDUSTRIAL FACILITIES PRODUCING COAL-BASED LIQUIDS USED TO PRODUCE SYNTHETIC FUELS, AND AEROSPACE INDUSTRIAL FACILITY INVESTMENTS.

§11-13D-7. Transfer of eligible investment to successors.

- 1 (a) *Mere change in form of business.* — Property may not
- 2 be treated as disposed of under section six of this article by

3 reason of a mere change in the form of conducting the business
4 as long as the property is retained in a similar industrial
5 business or management information services business activity
6 in this state and the taxpayer retains a controlling interest in the
7 successor business. In this event, the successor business may
8 claim the amount of credit still available with respect to the
9 industrial facility or facilities transferred or to the eligible
10 research and development project or management information
11 services facility and the taxpayer (transferor) may not be
12 required to redetermine the amount of credit allowed in earlier
13 years.

14 (b) *Transfer or sale to successor.* — Provided that the tax
15 commissioner gives prior approval for a transfer or sale,
16 property may not be treated as disposed of under section six by
17 reason of any transfer or sale to a successor business which
18 continues to operate the industrial facility or management
19 information services facility in this state. This requirement for
20 prior approval may be waived by the tax commissioner at any
21 time prior to, or subsequent to, the transfer or sale. Upon
22 transfer or sale, the successor shall acquire the amount of credit
23 that remains available under this article for each taxable year
24 subsequent to the taxable year of the transferor during which
25 the transfer occurred and, for the year of transfer, an amount of
26 annual credit for the year in the same proportion as the number
27 of days remaining in the transferor's taxable year bears to the
28 total number of days in the taxable year and the taxpayer
29 (transferor) shall not be required to redetermine the amount of
30 credit allowed in earlier years. In determining whether or not to
31 approve a disposition pursuant to this subsection, the tax
32 commissioner shall take into account the legislative findings
33 and purpose contained in section one of this article in making
34 the decision.

CHAPTER 295

(S. B. 650 — By Senators Craigo, McCabe, Fanning and Sharpe)

[Passed April 13, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section two, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to including construction management within the definition of contracting for sales and use tax purposes.

Be it enacted by the Legislature of West Virginia:

That section two, article fifteen, 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 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-2. Definitions.

1 For the purpose of this article:

2 (a) "Business" includes all activities engaged in or caused
3 to be engaged in with the object of gain or economic benefit,
4 direct or indirect, and all activities of the state and its political
5 subdivisions which involve sales of tangible personal property
6 or the rendering of services when those service activities
7 compete with or may compete with the activities of other
8 persons.

9 (b) "Communication" means all telephone, radio, light,
10 light wave, radio telephone, telegraph and other communication
11 or means of communication, whether used for voice communi-
12 cation, computer data transmission or other encoded symbolic
13 information transfers and shall include commercial broadcast
14 radio, commercial broadcast television and cable television.

15 (c) "Contracting":

16 (1) *In general.* — "Contracting" means and includes the
17 furnishing of work, or both materials and work, for another (by
18 a sole contractor, general contractor, prime contractor, subcon-
19 tractor or construction manager) in fulfillment of a contract for
20 the construction, alteration, repair, decoration or improvement
21 of a new or existing building or structure, or any part thereof,
22 or for removal or demolition of a building or structure, or any
23 part thereof, or for the alteration, improvement or development
24 of real property.

25 Contracting means and includes services provided by a
26 construction manager so long as the project for which the
27 construction manager provides the services results in a capital
28 improvement to a building or structure or to real property.

29 (2) *Form of contract not controlling.* — An activity that
30 falls within the scope of the definition of contracting shall
31 constitute contracting regardless of whether the contract
32 governing the activity is written or verbal and regardless of
33 whether it is in substance or form a lump sum contract, a cost-
34 plus contract, a time and materials contract, whether or not
35 open-ended, or any other kind of construction contract.

36 (3) *Special rules.* — For purposes of this definition:

37 (A) The term "structure" includes, but is not limited to,
38 everything built up or composed of parts joined together in
39 some definite manner and attached or affixed to real property

40 or which adds utility to real property or any part thereof or
41 which adds utility to a particular parcel of property and is
42 intended to remain there for an indefinite period of time;

43 (B) The term “alteration” means, and is limited to, alter-
44 ations which are capital improvements to a building or structure
45 or to real property;

46 (C) The term “repair” means, and is limited to, repairs
47 which are capital improvements to a building or structure or to
48 real property;

49 (D) The term “decoration” means, and is limited to,
50 decorations which are capital improvements to a building or
51 structure or to real property;

52 (E) The term “improvement” means, and is limited to,
53 improvements which are capital improvements to a building or
54 structure or to real property;

55 (F) The term “capital improvement” means improvements
56 that are affixed to or attached to and become a part of a building
57 or structure or the real property or which add utility to real
58 property, or any part thereof, and that last or are intended to be
59 relatively permanent. As used herein, “relatively permanent”
60 means lasting at least a year in duration without the necessity
61 for regularly scheduled recurring service to maintain the capital
62 improvement. “Regular recurring service” means regularly
63 scheduled service intervals of less than one year;

64 (G) Contracting does not include the furnishing of work, or
65 both materials and work, in the nature of hookup, connection,
66 installation or other services if the service is incidental to the
67 retail sale of tangible personal property from the service
68 provider’s inventory: *Provided*, That the hookup, connection or
69 installation of the foregoing is incidental to the sale of the same
70 and performed by the seller thereof or performed in accordance

71 with arrangements made by the seller thereof. Examples of
72 transactions that are excluded from the definition of contracting
73 pursuant hereto include, but are not limited to, the sale of
74 wall-to-wall carpeting and the installation of wall-to-wall
75 carpeting, the sale, hookup and connection of mobile homes,
76 window air conditioning units, dishwashers, clothing washing
77 machines or dryers, other household appliances, drapery rods,
78 window shades, venetian blinds, canvas awnings, free standing
79 industrial or commercial equipment and other similar items of
80 tangible personal property. Repairs made to the foregoing are
81 within the definition of contracting if the repairs involve
82 permanently affixing to or improving real property or some-
83 thing attached thereto which extends the life of the real property
84 or something affixed thereto or allows or intends to allow the
85 real property or thing permanently attached thereto to remain in
86 service for a year or longer.

87 (H) The term “construction manager” means a person who
88 enters into an agreement to employ, direct, coordinate or
89 manage design professionals and contractors who are hired and
90 paid directly by the owner or the construction manager. The
91 business activities of a “construction manager” as defined
92 herein shall constitute contracting, so long as the project for
93 which the construction manager provides the services results in
94 a capital improvement to a building or structure or to real
95 property.

96 (d) (1) “Directly used or consumed” in the activities of
97 manufacturing, transportation, transmission, communication or
98 the production of natural resources means used or consumed in
99 those activities or operations which constitute an integral and
100 essential part of the activities, as contrasted with and distin-
101 guished from those activities or operations which are simply
102 incidental, convenient or remote to the activities.

103 (2) Uses of property or consumption of services which
104 constitute direct use or consumption in the activities of manu-
105 facturing, transportation, transmission, communication or the
106 production of natural resources includes only:

107 (A) In the case of tangible personal property, physical
108 incorporation of property into a finished product resulting from
109 manufacturing production or the production of natural re-
110 sources;

111 (B) Causing a direct physical, chemical or other change
112 upon property undergoing manufacturing production or
113 production of natural resources;

114 (C) Transporting or storing property undergoing transporta-
115 tion, communication, transmission, manufacturing production
116 or production of natural resources;

117 (D) Measuring or verifying a change in property directly
118 used in transportation, communication, transmission, manufac-
119 turing production or production of natural resources;

120 (E) Physically controlling or directing the physical move-
121 ment or operation of property directly used in transportation,
122 communication, transmission, manufacturing production or
123 production of natural resources;

124 (F) Directly and physically recording the flow of property
125 undergoing transportation, communication, transmission,
126 manufacturing production or production of natural resources;

127 (G) Producing energy for property directly used in transpor-
128 tation, communication, transmission, manufacturing production
129 or production of natural resources;

130 (H) Facilitating the transmission of gas, water, steam or
131 electricity from the point of their diversion to property directly

132 used in transportation, communication, transmission, manufac-
133 turing production or production of natural resources;

134 (I) Controlling or otherwise regulating atmospheric
135 conditions required for transportation, communication, trans-
136 mission, manufacturing production or production of natural
137 resources;

138 (J) Serving as an operating supply for property undergoing
139 transmission, manufacturing production or production of
140 natural resources, or for property directly used in transportation,
141 communication, transmission, manufacturing production or
142 production of natural resources;

143 (K) Maintenance or repair of property, including mainte-
144 nance equipment, directly used in transportation, communica-
145 tion, transmission, manufacturing production or production of
146 natural resources;

147 (L) Storage, removal or transportation of economic waste
148 resulting from the activities of manufacturing, transportation,
149 communication, transmission or the production of natural
150 resources;

151 (M) Pollution control or environmental quality or protection
152 activity directly relating to the activities of manufacturing,
153 transportation, communication, transmission or the production
154 of natural resources and personnel, plant, product or community
155 safety or security activity directly relating to the activities of
156 manufacturing, transportation, communication, transmission or
157 the production of natural resources; or

158 (N) Otherwise be used as an integral and essential part of
159 transportation, communication, transmission, manufacturing
160 production or production of natural resources.

161 (3) Uses of property or services which do not constitute
162 direct use or consumption in the activities of manufacturing,
163 transportation, transmission, communication or the production
164 of natural resources include, but are not limited to:

165 (A) Heating and illumination of office buildings;

166 (B) Janitorial or general cleaning activities;

167 (C) Personal comfort of personnel;

168 (D) Production planning, scheduling of work or inventory
169 control;

170 (E) Marketing, general management, supervision, finance,
171 training, accounting and administration; or

172 (F) An activity or function incidental or convenient to
173 transportation, communication, transmission, manufacturing
174 production or production of natural resources, rather than an
175 integral and essential part of these activities.

176 (e) (1) "Directly used or consumed" in the activities of gas
177 storage, the generation or production or sale of electric power,
178 the provision of a public utility service or the operation of a
179 utility business means used or consumed in those activities or
180 operations which constitute an integral and essential part of
181 those activities or operation, as contrasted with and distin-
182 guished from activities or operations which are simply inciden-
183 tal, convenient or remote to those activities.

184 (2) Uses of property or consumption of services which
185 constitute direct use or consumption in the activities of gas
186 storage, the generation or production or sale of electric power,
187 the provision of a public utility service or the operation of a
188 utility business include only:

189 (A) Tangible personal property or services, including
190 equipment, machinery, apparatus, supplies, fuel and power and
191 appliances, which are used immediately in production or
192 generation activities and equipment, machinery, supplies, tools
193 and repair parts used to keep in operation exempt production or
194 generation devices. For purposes of this subsection, production
195 or generation activities shall commence from the intake, receipt
196 or storage of raw materials at the production plant site;

197 (B) Tangible personal property or services, including
198 equipment, machinery, apparatus, supplies, fuel and power,
199 appliances, pipes, wires and mains, which are used immediately
200 in the transmission or distribution of gas, water and electricity
201 to the public, and equipment, machinery, tools, repair parts and
202 supplies used to keep in operation exempt transmission or
203 distribution devices, and these vehicles and their equipment as
204 are specifically designed and equipped for such purposes are
205 exempt from the tax when used to keep a transmission or
206 distribution system in operation or repair. For purposes of this
207 subsection, transmission or distribution activities shall com-
208 mence from the close of production at a production plant or
209 wellhead when a product is ready for transmission or distribu-
210 tion to the public and shall conclude at the point where the
211 product is received by the public;

212 (C) Tangible personal property or services, including
213 equipment, machinery, apparatus, supplies, fuel and power,
214 appliance, pipes, wires and mains, which are used immediately
215 in the storage of gas or water, and equipment, machinery, tools,
216 supplies and repair parts used to keep in operation exempt
217 storage devices;

218 (D) Tangible personal property or services used immedi-
219 ately in the storage, removal or transportation of economic
220 waste resulting from the activities of gas storage, the generation

221 or production or sale of electric power, the provision of a public
222 utility service or the operation of a utility business;

223 (E) Tangible personal property or services used immedi-
224 ately in pollution control or environmental quality or protection
225 activity or community safety or security directly relating to the
226 activities of gas storage, generation or production or sale of
227 electric power, the provision of a public utility service or the
228 operation of a utility business.

229 (3) Uses of property or services which would not constitute
230 direct use or consumption in the activities of gas storage,
231 generation or production or sale of electric power, the provision
232 of a public utility service or the operation of a utility business
233 include, but are not limited to:

234 (A) Heating and illumination of office buildings;

235 (B) Janitorial or general cleaning activities;

236 (C) Personal comfort of personnel;

237 (D) Production planning, scheduling of work or inventory
238 control;

239 (E) Marketing, general management, supervision, finance,
240 training, accounting and administration; or

241 (F) An activity or function incidental or convenient to the
242 activities of gas storage, generation or production or sale of
243 electric power, the provision of public utility service or the
244 operation of a utility business.

245 (f) "Drugs" includes all sales of drugs or appliances to a
246 purchaser upon prescription of a physician or dentist and any
247 other professional person licensed to prescribe.

248 (g) "Gas storage" means the injection of gas into a storage
249 reservoir or the storage of gas for any period of time in a
250 storage reservoir or the withdrawal of gas from a storage
251 reservoir engaged in by businesses subject to the business and
252 occupation tax imposed by sections two and two-e, article
253 thirteen of this chapter.

254 (h) "Generating or producing or selling of electric power"
255 means the generation, production or sale of electric power
256 engaged in by businesses subject to the business and occupation
257 tax imposed by section two, two-d, two-m or two-n, article
258 thirteen of this chapter.

259 (i) "Gross proceeds" means the amount received in money,
260 credits, property or other consideration from sales and services
261 within this state, without deduction on account of the cost of
262 property sold, amounts paid for interest or discounts or other
263 expenses whatsoever. Losses may not be deducted, but any
264 credit or refund made for goods returned may be deducted.

265 (j) "Management information services" means, and is
266 limited to, data processing, data storage, data recovery and
267 backup, programming recovery and backup, telecommunica-
268 tions, computation and computer processing, computer pro-
269 gramming, electronic information and data management
270 activities, or any combination of these activities, when such
271 activity, or activities, is not subject to regulation by the West
272 Virginia public service commission and the activity, or activi-
273 ties, is for the purpose of managing, planning for, organizing or
274 operating, any industrial or commercial business, or any
275 enterprise, facility or facilities of an industrial or commercial
276 business, whether the industrial or commercial business or
277 enterprise, facility or facilities of an industrial or commercial
278 business is located within or without this state and without
279 regard to whether the industrial or commercial business, or
280 enterprise, facility or facilities of an industrial or commercial

281 business is owned by the provider of the management informa-
282 tion services or by a “related person”, as defined in Section
283 267(b) of the Internal Revenue Code of 1986, as amended.

284 (k) “Management information services facility” means a
285 building, or any part thereof, or a complex of buildings, or any
286 part thereof, including the machinery and equipment located
287 therein, that is exclusively dedicated to providing management
288 information services to the owner or operator thereof or to
289 another person.

290 (l) “Manufacturing” means a systematic operation or
291 integrated series of systematic operations engaged in as a
292 business or segment of a business which transforms or converts
293 tangible personal property by physical, chemical or other means
294 into a different form, composition or character from that in
295 which it originally existed.

296 (m) “Personal service” includes those:

297 (1) Compensated by the payment of wages in the ordinary
298 course of employment; and

299 (2) Rendered to the person of an individual without, at the
300 same time, selling tangible personal property, such as nursing,
301 barbering, shoe shining, manicuring and similar services.

302 (n) “Persons” means any individual, partnership, associa-
303 tion, corporation, state or its political subdivisions or agency of
304 either, guardian, trustee, committee, executor or administrator.

305 (o) “Production of natural resources” means, except for oil
306 and gas, the performance, by either the owner of the natural
307 resources or another, of the act or process of exploring, devel-
308 oping, severing, extracting, reducing to possession and loading
309 for shipment and shipment for sale, profit or commercial use of
310 any natural resource products and any reclamation, waste

311 disposal or environmental activities associated therewith and
312 the construction, installation or fabrication of ventilation
313 structures, mine shafts, slopes, boreholes, dewatering structures,
314 including associated facilities and apparatus, by the producer or
315 others, including contractors and subcontractors, at a coal mine
316 or coal production facility. For the natural resources oil and gas,
317 “production of natural resources” means the performance, by
318 either the owner of the natural resources, a contractor or a
319 subcontractor, of the act or process of exploring, developing,
320 drilling, well-stimulation activities such as logging, perforating
321 or fracturing, well-completion activities such as the installation
322 of the casing, tubing and other machinery and equipment and
323 any reclamation, waste disposal or environmental activities
324 associated therewith, including the installation of the gathering
325 system or other pipeline to transport the oil and gas produced or
326 environmental activities associated therewith and any service
327 work performed on the well or well site after production of the
328 well has initially commenced. All work performed to install or
329 maintain facilities up to the point of sale for severance tax
330 purposes would be included in the “production of natural
331 resources” and subject to the direct use concept. “Production of
332 natural resources” does not include the performance or furnish-
333 ing of work, or materials or work, in fulfillment of a contract
334 for the construction, alteration, repair, decoration or improve-
335 ment of a new or existing building or structure, or any part
336 thereof, or for the alteration, improvement or development of
337 real property, by persons other than those otherwise directly
338 engaged in the activities specifically set forth in this subsection
339 as “production of natural resources”.

340 (p) “Providing a public service or the operating of a utility
341 business” means the providing of a public service or the
342 operating of a utility by businesses subject to the business and
343 occupation tax imposed by sections two and two-d, article
344 thirteen of this chapter.

345 (q) "Purchaser" means a person who purchases tangible
346 personal property or a service taxed by this article.

347 (r) "Sale", "sales" or "selling" includes any transfer of the
348 possession or ownership of tangible personal property for a
349 consideration, including a lease or rental, when the transfer or
350 delivery is made in the ordinary course of the transferor's
351 business and is made to the transferee or his or her agent for
352 consumption or use or any other purpose.

353 (s) "Service" or "selected service" includes all nonprofes-
354 sional activities engaged in for other persons for a consider-
355 ation, which involve the rendering of a service as distinguished
356 from the sale of tangible personal property, but shall not include
357 contracting, personal services or the services rendered by an
358 employee to his or her employer or any service rendered for
359 resale.

360 (t) "Tax" includes all taxes, interest and penalties levied
361 hereunder.

362 (u) "Tax commissioner" means the state tax commissioner.

363 (v) "Taxpayer" means any person liable for the tax imposed
364 by this article.

365 (w) "Transmission" means the act or process of causing
366 liquid, natural gas or electricity to pass or be conveyed from
367 one place or geographical location to another place or geo-
368 graphical location through a pipeline or other medium for
369 commercial purposes.

370 (x) "Transportation" means the act or process of conveying,
371 as a commercial enterprise, passengers or goods from one place
372 or geographical location to another place or geographical
373 location.

374 (y) "Ultimate consumer" or "consumer" means a person
375 who uses or consumes services or personal property.

376 (z) "Vendor" means any person engaged in this state in
377 furnishing services taxed by this article or making sales of
378 tangible personal property.

CHAPTER 296

**(H. B. 2824 — By Delegates Compton, Leach, Kominar,
Varner, Michael, Browning and Hall)**

[Passed April 10, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section nine, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exempting from sales tax certain food packages sold to individuals who perform at least two hours of community service for each unit of food purchased; exempting sales of band boosters or other athletic or school booster organizations from sales tax; exempting sales by the division of culture and history of publications entitled "Goldenseal" and "West Virginia History"; exempting soap used at car wash facilities from the consumers sales tax; and exempting commissions received by a travel agency from an out-of-state vendor.

Be it enacted by the Legislature of West Virginia:

That section nine, article fifteen, 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 15. CONSUMERS SALES TAX.**§11-15-9. Exemptions.**

1 (a) *Exemptions for which exemption certificate may be*
2 *issued.* — A person having a right or claim to any exemption
3 set forth in this subsection may, in lieu of paying the tax
4 imposed by this article and filing a claim for refund, execute a
5 certificate of exemption, in the form required by the tax
6 commissioner, and deliver it to the vendor of the property or
7 service, in the manner required by the tax commissioner.
8 However, the tax commissioner may, by rule, specify those
9 exemptions authorized in this subsection for which exemptions
10 certificates are not required. The following sales of tangible
11 personal property and services are exempt as provided in this
12 subsection:

13 (1) Sales of gas, steam and water delivered to consumers
14 through mains or pipes and sales of electricity;

15 (2) Sales of textbooks required to be used in any of the
16 schools of this state or in any institution in this state which
17 qualifies as a nonprofit or educational institution subject to the
18 West Virginia department of education and the arts, the board
19 of trustees of the university system of West Virginia or the
20 board of directors for colleges located in this state;

21 (3) Sales of property or services to this state, its institutions
22 or subdivisions, governmental units, institutions or subdivisions
23 of other states: *Provided*, That the law of the other state
24 provides the same exemption to governmental units or subdivi-
25 sions of this state and to the United States, including agencies
26 of federal, state or local governments for distribution in public
27 welfare or relief work;

28 (4) Sales of vehicles which are titled by the division of
29 motor vehicles and which are subject to the tax imposed by

30 section four, article three, chapter seventeen-a of this code, or
31 like tax;

32 (5) Sales of property or services to churches which make no
33 charge whatsoever for the services they render: *Provided*, That
34 the exemption granted in this subdivision applies only to
35 services, equipment, supplies, food for meals and materials
36 directly used or consumed by these organizations and does not
37 apply to purchases of gasoline or special fuel;

38 (6) Sales of tangible personal property or services to a
39 corporation or organization which has a current registration
40 certificate issued under article twelve of this chapter, which is
41 exempt from federal income taxes under Section 501(c)(3) or
42 (c)(4) of the Internal Revenue Code of 1986, as amended, and
43 which is:

44 (A) A church or a convention or association of churches as
45 defined in Section 170 of the Internal Revenue Code of 1986,
46 as amended;

47 (B) An elementary or secondary school which maintains a
48 regular faculty and curriculum and has a regularly enrolled
49 body of pupils or students in attendance at the place in this state
50 where its educational activities are regularly carried on;

51 (C) A corporation or organization which annually receives
52 more than one half of its support from any combination of gifts,
53 grants, direct or indirect charitable contributions or membership
54 fees;

55 (D) An organization which has no paid employees and its
56 gross income from fund raisers, less reasonable and necessary
57 expenses incurred to raise the gross income (or the tangible
58 personal property or services purchased with the net income),
59 is donated to an organization which is exempt from income

60 taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue
61 Code of 1986, as amended;

62 (E) A youth organization, such as the girl scouts of the
63 United States of America, the boy scouts of America or the
64 YMCA Indian guide/princess program and the local affiliates
65 thereof, which is organized and operated exclusively for
66 charitable purposes and has as its primary purpose the
67 nonsectarian character development and citizenship training of
68 its members;

69 (F) For purposes of this subsection:

70 (i) The term "support" includes, but is not limited to:

71 (I) Gifts, grants, contributions or membership fees;

72 (II) Gross receipts from fund raisers which include receipts
73 from admissions, sales of merchandise, performance of services
74 or furnishing of facilities in any activity which is not an
75 unrelated trade or business within the meaning of Section 513
76 of the Internal Revenue Code of 1986, as amended;

77 (III) Net income from unrelated business activities, whether
78 or not the activities are carried on regularly as a trade or
79 business;

80 (IV) Gross investment income as defined in Section 509(e)
81 of the Internal Revenue Code of 1986, as amended;

82 (V) Tax revenues levied for the benefit of a corporation or
83 organization either paid to or expended on behalf of the
84 organization; and

85 (VI) The value of services or facilities (exclusive of
86 services or facilities generally furnished to the public without
87 charge) furnished by a governmental unit referred to in Section

88 170(c)(1) of the Internal Revenue Code of 1986, as amended,
89 to an organization without charge. This term does not include
90 any gain from the sale or other disposition of property which
91 would be considered as gain from the sale or exchange of a
92 capital asset, or the value of an exemption from any federal,
93 state or local tax or any similar benefit;

94 (ii) The term “charitable contribution” means a contribution
95 or gift to or for the use of a corporation or organization,
96 described in Section 170(c)(2) of the Internal Revenue Code of
97 1986, as amended; and

98 (iii) The term “membership fee” does not include any
99 amounts paid for tangible personal property or specific services
100 rendered to members by the corporation or organization;

101 (G) The exemption allowed by this subdivision does not
102 apply to sales of gasoline or special fuel or to sales of tangible
103 personal property or services to be used or consumed in the
104 generation of unrelated business income as defined in Section
105 513 of the Internal Revenue Code of 1986, as amended. The
106 provisions of this subdivision apply to sales made after the
107 thirtieth day of June, one thousand nine hundred eighty-nine:
108 *Provided*, That the exemption granted in this subdivision
109 applies only to services, equipment, supplies and materials used
110 or consumed in the activities for which the organizations
111 qualify as tax exempt organizations under the Internal Revenue
112 Code and does not apply to purchases of gasoline or special
113 fuel;

114 (7) An isolated transaction in which any taxable service or
115 any tangible personal property is sold, transferred, offered for
116 sale or delivered by the owner of the property or by his or her
117 representative for the owner’s account, the sale, transfer, offer
118 for sale or delivery not being made in the ordinary course of
119 repeated and successive transactions of like character by the

120 owner or on his or her account by the representative: *Provided,*
121 That nothing contained in this subdivision may be construed to
122 prevent an owner who sells, transfers or offers for sale tangible
123 personal property in an isolated transaction through an auction-
124 eer from availing himself or herself of the exemption provided
125 in this subdivision, regardless of where the isolated sale takes
126 place. The tax commissioner may propose a legislative rule for
127 promulgation pursuant to article three, chapter twenty-nine-a of
128 this code which he or she considers necessary for the efficient
129 administration of this exemption;

130 (8) Sales of tangible personal property or of any taxable
131 services rendered for use or consumption in connection with the
132 commercial production of an agricultural product the ultimate
133 sale of which is subject to the tax imposed by this article or
134 which would have been subject to tax under this article:
135 *Provided,* That sales of tangible personal property and services
136 to be used or consumed in the construction of or permanent
137 improvement to real property and sales of gasoline and special
138 fuel are not exempt: *Provided, however,* That nails and fencing
139 may not be considered as improvements to real property;

140 (9) Sales of tangible personal property to a person for the
141 purpose of resale in the form of tangible personal property:
142 *Provided,* That sales of gasoline and special fuel by distributors
143 and importers is taxable except when the sale is to another
144 distributor for resale: *Provided, however,* That sales of building
145 materials or building supplies or other property to any person
146 engaging in the activity of contracting, as defined in this article,
147 which is to be installed in, affixed to or incorporated by that
148 person or his or her agent into any real property, building or
149 structure is not exempt under this subdivision;

150 (10) Sales of newspapers when delivered to consumers by
151 route carriers;

152 (11) Sales of drugs dispensed upon prescription and sales
153 of insulin to consumers for medical purposes;

154 (12) Sales of radio and television broadcasting time,
155 preprinted advertising circulars and newspaper and outdoor
156 advertising space for the advertisement of goods or services;

157 (13) Sales and services performed by day care centers;

158 (14) Casual and occasional sales of property or services not
159 conducted in a repeated manner or in the ordinary course of
160 repetitive and successive transactions of like character by a
161 corporation or organization which is exempt from tax under
162 subdivision (6) of this subsection on its purchases of tangible
163 personal property or services:

164 (A) For purposes of this subdivision, the term “casual and
165 occasional sales not conducted in a repeated manner or in the
166 ordinary course of repetitive and successive transactions of like
167 character” means sales of tangible personal property or services
168 at fund raisers sponsored by a corporation or organization
169 which is exempt, under subdivision (6) of this subsection, from
170 payment of the tax imposed by this article on its purchases,
171 when the fund raisers are of limited duration and are held no
172 more than six times during any twelve-month period and
173 “limited duration” means no more than eighty-four consecutive
174 hours; and

175 (B) The provisions of this subdivision apply to sales made
176 after the thirtieth day of June, one thousand nine hundred
177 eighty-nine;

178 (15) Sales of property or services to a school which has
179 approval from the board of trustees of the university system of
180 West Virginia or the board of directors of the state college
181 system to award degrees, which has its principal campus in this
182 state, and which is exempt from federal and state income taxes

183 under Section 501(c)(3) of the Internal Revenue Code of 1986,
184 as amended: *Provided*, That sales of gasoline and special fuel
185 are taxable;

186 (16) Sales of mobile homes to be used by purchasers as
187 their principal year-round residence and dwelling: *Provided*,
188 That these mobile homes are subject to tax at the three-percent
189 rate;

190 (17) Sales of lottery tickets and materials by licensed
191 lottery sales agents and lottery retailers authorized by the state
192 lottery commission, under the provisions of article twenty-two,
193 chapter twenty-nine of this code;

194 (18) Leases of motor vehicles titled pursuant to the provi-
195 sions of article three, chapter seventeen-a of this code to lessees
196 for a period of thirty or more consecutive days. This exemption
197 applies to leases executed on or after the first day of July, one
198 thousand nine hundred eighty-seven, and to payments under
199 long-term leases executed before that date, for months of the
200 lease beginning on or after that date;

201 (19) Notwithstanding the provisions of section eighteen of
202 this article or any other provision of this article to the contrary,
203 sales of propane to consumers for poultry house heating
204 purposes, with any seller to the consumer who may have prior
205 paid the tax in his or her price, to not pass on the same to the
206 consumer, but to make application and receive refund of the tax
207 from the tax commissioner pursuant to rules which are promul-
208 gated after being proposed for legislative approval in accor-
209 dance with chapter twenty-nine-a of this code by the tax
210 commissioner;

211 (20) Any sales of tangible personal property or services
212 purchased after the thirtieth day of September, one thousand
213 nine hundred eighty-seven, and lawfully paid for with food
214 stamps pursuant to the federal food stamp program codified in

215 7 U.S.C. §2011 et seq., as amended, or with drafts issued
216 through the West Virginia special supplement food program for
217 women, infants and children codified in 42 U.S.C. §1786;

218 (21) Sales of tickets for activities sponsored by elementary
219 and secondary schools located within this state;

220 (22) Sales of electronic data processing services and related
221 software: *Provided*, That for the purposes of this subdivision
222 “electronic data processing services” means: (A) The process-
223 ing of another’s data, including all processes incident to
224 processing of data such as keypunching, keystroke verification,
225 rearranging or sorting of previously documented data for the
226 purpose of data entry or automatic processing and changing the
227 medium on which data is sorted, whether these processes are
228 done by the same person or several persons; and (B) providing
229 access to computer equipment for the purpose of processing
230 data or examining or acquiring data stored in or accessible to
231 the computer equipment;

232 (23) Tuition charged for attending educational summer
233 camps;

234 (24) Dispensing of services performed by one corporation,
235 partnership or limited liability company for another corpora-
236 tion, partnership or limited liability company when the entities
237 are members of the same controlled group or are related
238 taxpayers as defined in Section 267 of the Internal Revenue
239 Code. “Control” means ownership, directly or indirectly, of
240 stock, equity interests or membership interests possessing fifty
241 percent or more of the total combined voting power of all
242 classes of the stock of a corporation, equity interests of a
243 partnership or membership interests of a limited liability
244 company entitled to vote or ownership, directly or indirectly, of
245 stock, equity interests or membership interests possessing fifty

246 percent or more of the value of the corporation, partnership or
247 limited liability company;

248 (25) Food for the following are exempt:

249 (A) Food purchased or sold by a public or private school,
250 school-sponsored student organizations or school-sponsored
251 parent-teacher associations to students enrolled in the school or
252 to employees of the school during normal school hours; but not
253 those sales of food made to the general public;

254 (B) Food purchased or sold by a public or private college or
255 university or by a student organization officially recognized by
256 the college or university to students enrolled at the college or
257 university when the sales are made on a contract basis so that
258 a fixed price is paid for consumption of food products for a
259 specific period of time without respect to the amount of food
260 product actually consumed by the particular individual contract-
261 ing for the sale and no money is paid at the time the food
262 product is served or consumed;

263 (C) Food purchased or sold by a charitable or private
264 nonprofit organization, a nonprofit organization or a govern-
265 mental agency under a program to provide food to low-income
266 persons at or below cost;

267 (D) Food sold by a charitable or private nonprofit organiza-
268 tion, a nonprofit organization or a governmental agency under
269 a program operating in West Virginia for a minimum of five
270 years to provide food at or below cost to individuals who
271 perform a minimum of two hours of community service for
272 each unit of food purchased from the organization;

273 (E) Food sold in an occasional sale by a charitable or
274 nonprofit organization, including volunteer fire departments
275 and rescue squads, if the purpose of the sale is to obtain revenue

276 for the functions and activities of the organization and the
277 revenue obtained is actually expended for that purpose;

278 (F) Food sold by any religious organization at a social or
279 other gathering conducted by it or under its auspices, if the
280 purpose in selling the food is to obtain revenue for the functions
281 and activities of the organization and the revenue obtained from
282 selling the food is actually used in carrying on those functions
283 and activities: *Provided*, That purchases made by the organiza-
284 tions are not exempt as a purchase for resale;

285 (26) Sales of food by little leagues, midget football leagues,
286 youth football or soccer leagues, band boosters or other school
287 or athletic booster organizations supporting activities for grades
288 kindergarten through twelve and similar types of organizations,
289 including scouting groups and church youth groups, if the
290 purpose in selling the food is to obtain revenue for the functions
291 and activities of the organization and the revenues obtained
292 from selling the food is actually used in supporting or carrying
293 on functions and activities of the groups: *Provided*, That the
294 purchases made by the organizations are not exempt as a
295 purchase for resale;

296 (27) Charges for room and meals by fraternities and
297 sororities to their members: *Provided*, That the purchases made
298 by a fraternity or sorority are not exempt as a purchase for
299 resale;

300 (28) Sales of or charges for the transportation of passengers
301 in interstate commerce;

302 (29) Sales of tangible personal property or services to any
303 person which this state is prohibited from taxing under the laws
304 of the United States or under the constitution of this state;

305 (30) Sales of tangible personal property or services to any
306 person who claims exemption from the tax imposed by this

307 article or article fifteen-a of this chapter pursuant to the
308 provision of any other chapter of this code;

309 (31) Charges for the services of opening and closing a
310 burial lot;

311 (32) Sales of livestock, poultry or other farm products in
312 their original state by the producer of the livestock, poultry or
313 other farm products or a member of the producer's immediate
314 family who is not otherwise engaged in making retail sales of
315 tangible personal property; and sales of livestock sold at public
316 sales sponsored by breeders or registry associations or livestock
317 auction markets: *Provided*, That the exemptions allowed by this
318 subdivision apply to sales made on or after the first day of July,
319 one thousand nine hundred ninety, and may be claimed without
320 presenting or obtaining exemption certificates: *Provided*,
321 *however*, That the farmer shall maintain adequate records;

322 (33) Sales of motion picture films to motion picture
323 exhibitors for exhibition if the sale of tickets or the charge for
324 admission to the exhibition of the film is subject to the tax
325 imposed by this article and sales of coin-operated video arcade
326 machines or video arcade games to a person engaged in the
327 business of providing the machines to the public for a charge
328 upon which the tax imposed by this article is remitted to the tax
329 commissioner: *Provided*, That the exemption provided in this
330 subdivision applies to sales made on or after the first day of
331 July, one thousand nine hundred ninety, and may be claimed by
332 presenting to the seller a properly executed exemption certifi-
333 cate;

334 (34) Sales of aircraft repair, remodeling and maintenance
335 services when the services are to an aircraft operated by a
336 certified or licensed carrier of persons or property, or by a
337 governmental entity, or to an engine or other component part of
338 an aircraft operated by a certificated or licensed carrier of

339 persons or property, or by a governmental entity and sales of
340 tangible personal property that is permanently affixed or
341 permanently attached as a component part of an aircraft owned
342 or operated by a certificated or licensed carrier of persons or
343 property, or by a governmental entity, as part of the repair,
344 remodeling or maintenance service and sales of machinery,
345 tools or equipment, directly used or consumed exclusively in
346 the repair, remodeling or maintenance of aircraft, aircraft
347 engines or aircraft component parts, for a certificated or
348 licensed carrier of persons or property, or for a governmental
349 entity;

350 (35) Charges for memberships or services provided by
351 health and fitness organizations relating to personalized fitness
352 programs;

353 (36) Sales of services by individuals who baby-sit for a
354 profit: *Provided*, That the gross receipts of the individual from
355 the performance of baby-sitting services do not exceed five
356 thousand dollars in a taxable year;

357 (37) Sales of services after the thirtieth day of June, one
358 thousand nine hundred ninety-seven, by public libraries or by
359 libraries at academic institutions or by libraries at institutions
360 of higher learning;

361 (38) Commissions received after the thirtieth day of June,
362 one thousand nine hundred ninety-seven, by a manufacturer's
363 representative;

364 (39) Sales of primary opinion research services after the
365 thirtieth day of June, one thousand nine hundred ninety-seven,
366 when:

367 (A) The services are provided to an out-of-state client;

368 (B) The results of the service activities, including, but not
369 limited to, reports, lists of focus group recruits and compilation
370 of data are transferred to the client across state lines by mail,
371 wire or other means of interstate commerce, for use by the
372 client outside the state of West Virginia; and

373 (C) The transfer of the results of the service activities is an
374 indispensable part of the overall service.

375 For the purpose of this subdivision, the term “primary
376 opinion research” means original research in the form of
377 telephone surveys, mall intercept surveys, focus group research,
378 direct mail surveys, personal interviews and other data collec-
379 tion methods commonly used for quantitative and qualitative
380 opinion research studies;

381 (40) Sales of property or services after the thirtieth day of
382 June, one thousand nine hundred ninety-seven, to persons
383 within the state when those sales are for the purposes of the
384 production of value-added products: *Provided*, That the
385 exemption granted in this subdivision applies only to services,
386 equipment, supplies and materials directly used or consumed by
387 those persons engaged solely in the production of value-added
388 products: *Provided, however*, That this exemption may not be
389 claimed by any one purchaser for more than five consecutive
390 years, except as otherwise permitted in this section.

391 For the purpose of this subdivision, the term “value-added
392 product” means the following products derived from processing
393 a raw agricultural product, whether for human consumption or
394 for other use: For purposes of this subdivision, the following
395 enterprises qualify as processing raw agricultural products into
396 value-added products: Those engaged in the conversion of:

397 (A) Lumber into furniture, toys, collectibles and home
398 furnishings;

399 (B) Fruits into wine;

400 (C) Honey into wine;

401 (D) Wool into fabric;

402 (E) Raw hides into semifinished or finished leather prod-
403 ucts;

404 (F) Milk into cheese;

405 (G) Fruits or vegetables into a dried, canned or frozen
406 product;

407 (H) Feeder cattle into commonly accepted slaughter
408 weights;

409 (I) Aquatic animals into a dried, canned, cooked or frozen
410 product; and

411 (J) Poultry into a dried, canned, cooked or frozen product;

412 (41) After the thirtieth day of June, one thousand nine
413 hundred ninety-seven, sales of music instructional services by
414 a music teacher and artistic services or artistic performances of
415 an entertainer or performing artist pursuant to a contract with
416 the owner or operator of a retail establishment, restaurant, inn,
417 bar, tavern, sports or other entertainment facility or any other
418 business location in this state in which the public or a limited
419 portion of the public may assemble to hear or see musical
420 works or other artistic works be performed for the enjoyment of
421 the members of the public there assembled when the amount
422 paid by the owner or operator for the artistic service or artistic
423 performance does not exceed three thousand dollars: *Provided,*
424 That nothing contained herein may be construed to deprive
425 private social gatherings, weddings or other private parties from
426 asserting the exemption set forth in this subdivision. For the

427 purposes of this exemption, artistic performance or artistic
428 service means and is limited to the conscious use of creative
429 power, imagination and skill in the creation of aesthetic
430 experience for an audience present and in attendance and
431 includes, and is limited to, stage plays, musical performances,
432 poetry recitations and other readings, dance presentation,
433 circuses and similar presentations and does not include the
434 showing of any film or moving picture, gallery presentations of
435 sculptural or pictorial art, nude or strip show presentations,
436 video games, video arcades, carnival rides, radio or television
437 shows or any video or audio taped presentations or the sale or
438 leasing of video or audio tapes, airshows, or any other public
439 meeting, display or show other than those specified herein:
440 *Provided, however,* That nothing contained herein may be
441 construed to exempt the sales of tickets from the tax imposed in
442 this article. The state tax commissioner shall propose a legisla-
443 tive rule pursuant to article three, chapter twenty-nine-a of this
444 code establishing definitions and eligibility criteria for asserting
445 this exemption which is not inconsistent with the provisions set
446 forth herein: *Provided further,* That nude dancers or strippers
447 may not be considered as entertainers for the purposes of this
448 exemption;

449 (42) After the thirtieth day of June, one thousand nine
450 hundred ninety-seven, charges to a member by a membership
451 association or organization which is exempt from paying
452 federal income taxes under Section 501(c)(3) or (c)(6) of the
453 Internal Revenue Code of 1986, as amended, for membership
454 in the association or organization, including charges to mem-
455 bers for newsletters prepared by the association or organization
456 for distribution primarily to its members, charges to members
457 for continuing education seminars, workshops, conventions,
458 lectures or courses put on or sponsored by the association or
459 organization, including charges for related course materials
460 prepared by the association or organization or by the speaker or
461 speakers for use during the continuing education seminar,

462 workshop, convention, lecture or course, but not including any
463 separate charge or separately stated charge for meals, lodging,
464 entertainment or transportation taxable under this article:
465 *Provided*, That the association or organization pays the tax
466 imposed by this article on its purchases of meals, lodging,
467 entertainment or transportation taxable under this article for
468 which a separate or separately stated charge is not made. A
469 membership association or organization which is exempt from
470 paying federal income taxes under Section 501(c)(3) or (c)(6)
471 of the Internal Revenue Code of 1986, as amended, may elect
472 to pay the tax imposed under this article on the purchases for
473 which a separate charge or separately stated charge could apply
474 and not charge its members the tax imposed by this article or
475 the association or organization may avail itself of the exemption
476 set forth in subdivision (9) of this subsection relating to
477 purchases of tangible personal property for resale and then
478 collect the tax imposed by this article on those items from its
479 member;

480 (43) Sales of governmental services or governmental
481 materials after the thirtieth day of June, one thousand nine
482 hundred ninety-seven, by county assessors, county sheriffs,
483 county clerks or circuit clerks in the normal course of local
484 government operations;

485 (44) Direct or subscription sales by the division of natural
486 resources of the magazine currently entitled "Wonderful West
487 Virginia" and by the division of culture and history of the
488 magazine currently entitled "Goldenseal" and the journal
489 currently entitled "West Virginia History";

490 (45) Sales of soap to be used at car wash facilities; and

491 (46) Commissions received by a travel agency from an out-
492 of-state vendor.

493 (b) *Refundable exemptions.* — Any person having a right or
494 claim to any exemption set forth in this subsection shall first
495 pay to the vendor the tax imposed by this article and then apply
496 to the tax commissioner for a refund or credit, or as provided in
497 section nine-d of this article, give to the vendor his or her West
498 Virginia direct pay permit number. The following sales of
499 tangible personal property and services are exempt from tax as
500 provided in this subsection:

501 (1) Sales of property or services to bona fide charitable
502 organizations who make no charge whatsoever for the services
503 they render: *Provided*, That the exemption granted in this
504 subdivision applies only to services, equipment, supplies, food,
505 meals and materials directly used or consumed by these
506 organizations, and does not apply to purchases of gasoline or
507 special fuel;

508 (2) Sales of services, machinery, supplies and materials
509 directly used or consumed in the activities of manufacturing,
510 transportation, transmission, communication, production of
511 natural resources, gas storage, generation or production or
512 selling electric power, provision of a public utility service or the
513 operation of a utility service or the operation of a utility
514 business, in the businesses or organizations named in this
515 subdivision and does not apply to purchases of gasoline or
516 special fuel;

517 (3) Sales of property or services to nationally chartered
518 fraternal or social organizations for the sole purpose of free
519 distribution in public welfare or relief work: *Provided*, That
520 sales of gasoline and special fuel are taxable;

521 (4) Sales and services, fire fighting or station house
522 equipment, including construction and automotive, made to any
523 volunteer fire department organized and incorporated under the

524 laws of the state of West Virginia: *Provided*, That sales of
525 gasoline and special fuel are taxable; and

526 (5) Sales of building materials or building supplies or other
527 property to an organization qualified under Section 501(c)(3) or
528 (c)(4) of the Internal Revenue Code of 1986, as amended,
529 which are to be installed in, affixed to or incorporated by the
530 organization or its agent into real property or into a building or
531 structure which is or will be used as permanent low-income
532 housing, transitional housing, an emergency homeless shelter,
533 a domestic violence shelter or an emergency children and youth
534 shelter if the shelter is owned, managed, developed or operated
535 by an organization qualified under Section 501(c)(3) or (c)(4)
536 of the Internal Revenue Code of 1986, as amended.

CHAPTER 297

(Com. Sub. for S. B. 116 — By Senators Tomblin,
Mr. President, and Sprouse)
[By Request of the Executive]

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four, four-a, five, twelve, nineteen and twenty, article seventeen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto seven new sections, designated sections thirteen, nineteen-a, nineteen-b, nineteen-c, twenty-a, twenty-b and twenty-three; and to amend and reenact section seven hundred three, article seven, chapter sixty-a of said code, all relating to imposing, administering, collecting and enforcing excise tax on sale and use of cigarettes and other tobacco products; renaming the cigarette

tax act as the tobacco products excise tax act; defining terms; applying existing provisions, procedures, requirements and rules to all tobacco products; requiring use of invoice method for the payment of tax on tobacco products other than cigarettes; imposing excise tax on tobacco products other than cigarettes based on a fixed percentage of the wholesale price; dedicating proceeds of tax to general revenue fund; establishing money penalties; imposing certain criminal penalties; declaring certain nontaxed tobacco products to be contraband; providing for seizure and disposition of contraband property and distribution of proceeds; requiring of special study on impact of tax on tobacco products other than cigarettes; and providing effective date of tax on tobacco products other than cigarettes.

Be it enacted by the Legislature of West Virginia:

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

Chapter

11. Taxation.

60A. Uniform Controlled Substances Act.

CHAPTER 11. TAXATION.

ARTICLE 17. TOBACCO PRODUCTS EXCISE TAX ACT.

§11-17-1. Short title.

§11-17-2. Definitions.

§11-17-3. Levy of tax; ratio; dedication of proceeds.

§11-17-4. Effect of rate changes; cigarettes on hand or in inventory; report; discount.

- §11-17-4a. No tobacco products tax by municipalities or other governmental subdivisions.
- §11-17-5. How tax paid; stamps; how affixed; violations.
- §11-17-12. Reports required; due date; records to be kept; inspection of records and stocks; examination of witnesses, summons, etc.
- §11-17-13. Preservation of rules.
- §11-17-19. Penalty for failure to file report when no tax due.
- §11-17-19a. Criminal penalties.
- §11-17-19b. Certain tax-not-paid tobacco products declared contraband.
- §11-17-19c. Magistrate courts have concurrent jurisdiction.
- §11-17-20. Transportation of unstamped cigarettes or tax-not-paid tobacco products; forfeitures and sales of cigarettes and equipment.
- §11-17-20a. Criminal penalty for unlawful transportation of tax-not-paid tobacco products.
- §11-17-20b. Vending machines; presence of tax-not-paid tobacco products.
- §11-17-23. Special study on impact of tax on tobacco products other than cigarettes.

§11-17-1. Short title.

- 1 This article shall be known, and may be cited, as the
- 2 "Tobacco Products Excise Tax Act".

§11-17-2. Definitions.

- 1 (a) When used in this article, words, terms and phrases
- 2 defined in subsection (b) of this section, and any variations
- 3 thereof required by the context, have the meaning ascribed to
- 4 them in this section, except where the context indicates a
- 5 different meaning is intended.

- 6 (b) *Definitions.* —

- 7 (1) "Cigarette" means:

- 8 (A) Any roll for smoking made, wholly or in part, of
- 9 tobacco, irrespective of size or shape and whether or not the
- 10 tobacco is flavored, adulterated or mixed with any ingredient,
- 11 the wrapping or cover of which is made of paper or any
- 12 substance or material, except tobacco.

13 (B) Any roll of tobacco wrapped in any substance contain-
14 ing tobacco which, because of its appearance, the type of
15 tobacco used in the filler, or its packing and labeling, is likely
16 to be offered to, or purchased by, consumers as a cigarette
17 described in paragraph (A) of this subdivision.

18 (2) "Commissioner" means the state tax commissioner and,
19 where the meaning of the context requires, all deputies or
20 agents and employees duly authorized by him or her.

21 (3) "Consumer" means a person who receives or in any way
22 comes into possession of tobacco products for the purpose of
23 consuming or giving them away or disposing of them in any
24 way other than by sale, barter or exchange.

25 (4) "Counterfeit stamp" means any stamp, label or print,
26 indicium or character, that evidences, or purports to evidence,
27 the payment of any tax levied under this article and that has not
28 been printed, manufactured or made by authority of the
29 commissioner, as provided in this article, and has not been
30 issued, sold or circulated by the commissioner.

31 (5) "Manufacturer" means a person who manufactures or
32 produces a tobacco product.

33 (6) "Other tobacco product" or "tobacco products other than
34 cigarettes" means snuff and chewing tobacco and any other
35 tobacco product that is intended by the seller to be consumed by
36 means other than smoking and any cigar, pipe tobacco or other
37 tobacco product other than cigarettes.

38 (7) "Package" means the individual package, box or other
39 container in or from which retail sales of tobacco products are
40 normally made or intended to be made.

41 (8) "Person" means and includes any individual, firm,
42 association, company, partnership, corporation, joint-stock

43 company, club, agency, syndicate, limited liability company,
44 other legal entity, municipal corporation or other political
45 subdivision of this state, trust, receiver, trustee, fiduciary or
46 conservator, and when used in connection with any penalties
47 imposed by this article, means and includes officers, directors,
48 trustees or members of any firm, copartnership, association,
49 corporation, trust or any other unit acting as a group.

50 (9) "Place of business" means a place where a tobacco
51 product is sold or where a tobacco product is brought or kept
52 for the purpose of sale or consumption, including a vessel,
53 airplane, train or vending machine.

54 (10) "Retail dealer" includes every person in this state,
55 other than a wholesaler or subjobber, engaged in the selling of
56 tobacco products at retail to a consumer or to any person for
57 any purpose other than resale.

58 (11) "Sale" means selling, exchange, transfer of title, barter,
59 gift, offer for sale or distribution or disposition of cigarettes or
60 other tobacco products.

61 (12) "Sale at retail" or "retail sale" means a sale to a
62 consumer or to any person for any purpose other than resale.

63 (13) "Sale by wholesaler" means and includes any bona
64 fide transfer of title to tobacco products by a wholesaler for a
65 valuable consideration, made in the ordinary course of trade or
66 in the usual conduct of the wholesaler's business.

67 (14) "Stamp" or "meter impression" means any cigarette
68 stamp or any meter or ink impression or other indicia autho-
69 rized by the tax commissioner to serve as a stamp and shall be
70 of the design and color as prescribed by the tax commissioner.

71 (15) "Stamped cigarettes" means that the stamp or meter
72 impression, as required by this article, has been affixed to the
73 bottom of the package of cigarettes.

74 (16) "Subjobber" or "subjobber dealer" includes any person
75 who purchases stamped cigarettes or tax-paid tobacco products
76 from a wholesaler or from any other person who purchases
77 from the manufacturer or importer and who purchases the tax-
78 paid tobacco products solely for the purpose of bona fide resale
79 to retail dealers.

80 (17) "Tax-not-paid tobacco product" means a tobacco
81 product upon which the tax imposed by this article has not been
82 paid.

83 (18) "Tax-paid tobacco products" means a tobacco product
84 upon which the tax imposed by this article has been paid.

85 (19) "Tobacco product" includes cigarettes and any other
86 tobacco product.

87 (20) "Transportation company" means a person operating
88 or supplying to common carriers, cars, boats or other vehicles
89 for the transportation or accommodation of passengers and
90 engaged in the sale of a tobacco product at retail.

91 (21) "Transporter" means a person importing or transport-
92 ing into this state a tobacco product obtained from a source
93 located outside this state or transporting within this state
94 tobacco products belonging to another person.

95 (22) "Unstamped cigarettes" means that the stamp or
96 impression as required by this article has not been affixed to the
97 bottom of the package of cigarettes.

98 (23) "Vending machine operator" means any person
99 operating one or more vending machines for the sale of tobacco

100 products. The sale of tobacco products through a vending
101 machine will be construed as sales at retail and subjects the
102 vending machine operator to this article and rules pertaining to
103 retail dealers.

104 Whenever any tobacco products vending machine operator
105 purchases tax-not-paid tobacco products directly from the
106 manufacturer or any other person, the vending machine
107 operator shall be considered to be a wholesaler and is liable for
108 payment of the excise tax imposed by this article and the
109 affixing of the required stamps.

110 (24) "Wholesale price" means the gross invoice price,
111 including all federal excise taxes, at which the manufacturer of
112 the tobacco product sells the tobacco product to unaffiliated
113 distributors, excluding all trade discounts and other reductions
114 in the manufacturer's price. If the taxpayer buys from other
115 than a manufacturer, "wholesale price" means the gross invoice
116 price, including all federal excise taxes and excluding all trade
117 discounts and other similar reductions in price.

118 (25) "Wholesaler" or "wholesale dealer" includes any
119 person in this state who purchases tax-not-paid tobacco
120 products directly from the manufacturer, or such other seller as
121 may be approved by the tax commissioner. Any distributor,
122 dealer, subjobber, subjobber dealer, retailer or any other person
123 that imports or transports tax-not-paid tobacco products into
124 this state, or that causes tax-not-paid tobacco products to be
125 imported or transported into this state is a wholesaler liable for
126 the tax imposed under this article and, in the case of cigarettes
127 purchased, is liable for affixing tax indicia in accordance with
128 the requirements of this article. No wholesaler or other person
129 may purchase tax-not-paid tobacco products from any seller not
130 approved by the tax commissioner.

§11-17-3. Levy of tax; ratio; dedication of proceeds.

1 (a) *Tax on cigarettes.* — For the purpose of providing
2 revenue for the general revenue fund of the state, an excise tax
3 is hereby continued on sales of cigarettes at the rate of seven-
4 teen cents on each twenty cigarettes or in like ratio on any part
5 thereof. Only one sale of the same article shall be used in
6 computing the amount of tax due under this subsection.

7 (b) *Tax on tobacco products other than cigarettes.* —
8 Effective the first day of January, two thousand two, an excise
9 tax is hereby levied and imposed on the sale or use of other than
10 cigarettes tobacco products at a rate equal to seven percent of
11 the wholesale price of each article or item of tobacco product
12 other than cigarettes sold by the wholesaler or subjobber dealer,
13 whether or not sold at wholesale, or if not sold, then at the same
14 rate upon the use by the wholesaler or dealer. Only one sale of
15 the same article shall be used in computing the amount of tax
16 due under this subsection. Revenues received from this tax shall
17 be deposited into the general revenue fund.

**§11-17-4. Effect of rate changes; cigarettes on hand or in inven-
tory; report; discount.**

1 (a) Notwithstanding other provisions of this article, it is
2 hereby declared to be the intent of the Legislature that one rate
3 of excise tax is applicable to all quantities of cigarettes and
4 another rate of excise tax is applicable to all tobacco products
5 other than cigarettes in this state on and after the first day of
6 July, two thousand one, under the provisions of this article. Any
7 tobacco products, on hand or in inventory, on the effective date
8 of any rate change are hereby considered to have been pur-
9 chased or received on the effective date of the change in rate.

10 (b) Every wholesaler, subjobber, subjobber dealer, retail
11 dealer and vending machine operator who, on the effective date
12 of any rate change, has, on hand or in inventory, any tobacco
13 products, upon which the tax or any portion of the tax has been

14 previously paid, shall take a physical inventory and shall file a
15 report of the inventory with the tax commissioner, in the format
16 required by the tax commissioner, within thirty days after the
17 inventory, and shall pay to the tax commissioner, at the time of
18 filing the report, any additional tax due under an increased rate.
19 A discount of four percent shall be allowed on all tax due for
20 persons who pay additional tax under this section.

21 (c) Imposition of the tax on tobacco products other than
22 cigarettes shall be treated as a change in rate on the effective
23 date of the tax.

§11-17-4a. No tobacco products tax by municipalities or other governmental subdivisions.

1 No municipality or governmental subdivision shall levy any
2 excise or other tax on any tobacco product, or require cigarettes
3 or other tobacco products to be stamped, or require licenses for
4 sale thereof, other than licenses which may be required in
5 accordance with section four, article twelve of this chapter.

§11-17-5. How tax paid; stamps; how affixed; violations.

1 (a) The tax imposed by this article on cigarettes shall be
2 paid by the purchase of stamps as provided in this article.

3 (b) The tax imposed by this article on tobacco products
4 other than cigarettes shall be paid using an invoice method
5 prescribed by the tax commissioner.

6 (c) Payment for stamps purchased from the commissioner
7 shall be made by cash, money order, bank draft, certified check
8 or by noncertified check. However, in the event a noncertified
9 check is returned unpaid by its bank, then it shall be considered
10 that payment has not been made for the taxes due.

11 (d) A stamp, as required by this article, as described in the
12 rules promulgated under this article by the tax commissioner in
13 accordance with article three, chapter twenty-nine-a of this
14 code, shall be affixed to or impressed upon each package of
15 cigarettes of an aggregate value of not less than the amount of
16 tax upon the contents of the package. The stamp or impression
17 that is affixed is prima facie evidence of payment of the tax
18 imposed by this article. Stamps or meter impressions shall be
19 purchased from the commissioner or his or her deputy, by, and
20 paid for by, wholesalers.

21 (e) Except as may be otherwise provided in the rules
22 prescribed by the commissioner, under authority of this article
23 and article ten of this chapter, and unless the stamps have been
24 previously affixed, they shall be affixed by each wholesale
25 dealer who must be authorized to do business in this state prior
26 to the sale or delivery of any cigarettes to any retail dealer or
27 subjobber in this state.

28 (f) Except as may be otherwise provided in the rules
29 prescribed by the commissioner, each wholesale dealer of
30 tobacco product of shall be authorized to do business in this
31 state prior to the sale or delivery of any tobacco products to any
32 retail dealer or subjobber in this state. A wholesale dealer may
33 sell tax-paid tobacco products only to another wholesaler or a
34 retail dealer or subjobber in this state. No wholesaler or other
35 person may purchase tax-not-paid tobacco products from any
36 seller not approved by the tax commissioner.

37 (g) Whenever any cigarettes are found in the place of
38 business of any retail dealer or subjobber without the stamps
39 affixed, the prima facie presumption shall arise that the
40 cigarettes are kept in the place of business in violation of the
41 provisions of this article.

42 (h) Whenever any tobacco products other than cigarettes are
43 found in the place of business of any retail dealer or subjobber
44 and there is no evidence that the tax imposed by this article has
45 been paid on the tobacco products other than cigarettes, it shall
46 be presumed that the tobacco products other than cigarettes are
47 kept on the premises in violation of this article.

48 (i) If the tax commissioner determines that it is practicable
49 to stamp packages of cigarettes by impression by means of a
50 metering device, then the commissioner shall provide that the
51 metering device and its impression may be used in lieu of the
52 stamps otherwise required by law. The tax commissioner may
53 authorize any wholesaler purchasing tobacco products, who
54 holds a valid business registration certificate, as required by
55 article twelve of this chapter, to use any metering device
56 approved by the commissioner after the device has been sealed
57 by the commissioner or a deputy, or agent, authorized by the
58 commissioner. A metering device shall be used only in accor-
59 dance with the rules prescribed by the commissioner.

60 (j) A wholesaler may elect to pay the tax in advance when
61 a metering device is used, in which event the wholesaler shall
62 deliver the metering device to the commissioner, or his or her
63 agent authorized for that purpose, who shall seal the meter in
64 accordance with the prepayment that was made.

**§11-17-12. Reports required; due date; records to be kept; in-
spection of records and stocks; examination of
witnesses, summons, etc.**

1 (a) *Due date.* — On or before the fifteenth day of each
2 month, manufacturers, importers, common carriers, wholesal-
3 ers, subjobbers, retail dealers and agents or vending machine
4 operators shall, when required by this article, or the tax com-
5 missioner, file a report covering the business transacted in the
6 previous month providing any information the commissioner
7 determines necessary for the ascertainment or assessment of the

8 taxes imposed by this article. Reports shall be signed under
9 penalty of perjury and be in a form as prescribed by the tax
10 commissioner. The amount of tax shown to be due on the
11 monthly report, if any, shall be remitted by the due date of the
12 monthly report, determined without regard to any authorized
13 extension of time for filing the report.

14 (b) *Reports required.* — The reports prescribed in this
15 article are required, although a tax might not be due or no
16 business transacted, for the period covered by the report.

17 (c) *Records.* — Each person required to file a report under
18 this article shall make and keep the records necessary to
19 substantiate the accuracy of the reports required by this article,
20 including, but not limited to, records of inventories, receipts,
21 disbursements and sales. Records shall be retained for a period
22 of time not less than three years, unless the tax commissioner
23 gives written consent to their earlier destruction.

24 (d) *Contents of delivery ticket or invoice.* — Unless
25 otherwise permitted, in writing, by authority of the tax commis-
26 sioner, each delivery ticket or invoice for each purchase or sale
27 of tobacco products must be recorded upon a serially numbered
28 invoice showing: (1) The name and address of the seller and the
29 purchaser; (2) the point of delivery; (3) the date, quantity and
30 price of each tobacco product delivered in this state; (4) the
31 amount of tax imposed by this article, which must be set out
32 separately or the invoice must indicate whether or not the West
33 Virginia tobacco products excise tax is included in the total
34 price; and (5) any other reasonable information required by the
35 tax commissioner. However, these invoicing requirements do
36 not apply to cash sales: *Provided*, That the person making the
37 cash sales shall maintain the records reasonably necessary to
38 substantiate the accuracy of his or her monthly report.

39 (e) *Inspection of tobacco products inventory.* -- In addition
40 to the tax commissioner's powers set forth in section five,
41 article ten of this chapter, the tax commissioner, or a deputy or
42 agent authorized by the commissioner, may inspect or examine
43 the stock of tobacco products kept in and upon the premises of
44 any person where tobacco products are placed, stored or sold
45 and shall inspect or examine the records, books, papers and any
46 equipment or records of manufacturers, importers, cigarette
47 stamping agents, wholesalers, subjobbers, retail dealers,
48 common carriers or any other person for the purpose of
49 determining the quantity and value of tobacco products ac-
50 quired or disbursed to verify the truth and accuracy of any
51 statement or report and to ascertain whether the tax imposed by
52 this article has been properly paid.

53 (f) *Examination of witnesses and records.* -- In addition to
54 the tax commissioner's powers set forth in section five, article
55 ten of this chapter, and as a further means of obtaining the
56 records, books and papers of a manufacturer, importer, common
57 carrier, wholesaler, subjobber or retailer or any other person
58 and ascertaining the amount of taxes and reports due under this
59 article, the commissioner and any duly appointed agent may
60 examine witnesses under oath; and if the witness fail or refuse
61 at the request of the tax commissioner or any duly appointed
62 agent to grant access to the books, records or papers, the tax
63 commissioner or the agent shall certify the facts and names to
64 the circuit court of the county having jurisdiction of the party
65 and court shall thereupon issue summons to the party to appear
66 before the tax commissioner or any duly appointed agent, at a
67 place designated within the jurisdiction of the court, on a day
68 fixed, to be continued as the occasion may require for good
69 cause shown and give evidence and lay open for inspection any
70 books and papers that may be required for the purpose of
71 ascertaining the amount of tax and reports due, if any.

§11-17-13. Preservation of rules.

1 All rules for the cigarette tax act previously promulgated by
2 the commissioner, as provided in this article, article ten of this
3 chapter and article three, chapter twenty-nine-a of this code,
4 remain in effect until they are amended or repealed by the
5 commissioner or superceded by operation of law.

§11-17-19. Penalty for failure to file report when no tax due.

1 In the case of any failure to make or file a report when no
2 tax is due, as required by this article on the date prescribed for
3 filing, unless it be shown that the failure was due to reasonable
4 cause and not due to willful neglect, there shall be collected a
5 penalty of twenty-five dollars for each month of the failure or
6 fraction of a month.

§11-17-19a. Criminal penalties.

1 (a) *Misdemeanor penalties.* — If any person commits any
2 act set forth in this subsection, the person shall be guilty of a
3 misdemeanor and, upon conviction thereof, shall be fined not
4 less than one thousand dollars nor more than twenty-five
5 thousand dollars, or imprisoned in a county or regional jail for
6 not more than one year, or both fined and imprisoned. Each act
7 constitutes a separate misdemeanor:

8 (1) The person makes any false entry upon an invoice,
9 package or container of tobacco products that is required to be
10 made under the provisions of this article;

11 (2) The person with intent to evade the tax imposed by this
12 article, presents any false entry upon an invoice, package or
13 container of tobacco products for the inspection of the commis-
14 sioner or the commissioner's authorized deputy, agent or
15 employee;

16 (3) The person prevents or hinders the commissioner or the
17 commissioner's authorized deputy, agent or employee from

18 making a full inspection of any place where tobacco products
19 subject to the tax imposed by this state are sold or stored;

20 (4) The person prevents or hinders the full inspection of
21 invoices, books, records or papers required to be kept under the
22 provisions of this article;

23 (5) The person sells cigarettes in this state without there
24 having been first affixed to each individual package of ciga-
25 rettes the stamp or meter impression required to be affixed to
26 the package by this article;

27 (6) The person sells other tax-not-paid tobacco products in
28 this state to a subjobber, retail dealer or consumer in this state;

29 (7) The person, being a retail dealer or subjobber in this
30 state, has in his or her possession packages of cigarettes not
31 bearing the stamps or meter impression required to be affixed
32 to the package by this article;

33 (8) The person, being a retail dealer or subjobber in this
34 state, has in his or her possession tax-not-paid packages of other
35 tobacco products;

36 (9) The person fails to produce on demand by the commis-
37 sioner, or the commissioner's authorized deputy, agent or
38 employee, invoices of all tobacco products purchased or
39 received by him or her within two years prior to the date of the
40 demand, unless upon satisfactory proof it is shown that the
41 nonproduction is due to providential or other causes beyond his
42 or her control;

43 (10) The person being a wholesale dealer sells tobacco
44 products to any person in this state other than to another
45 wholesaler, or to a subjobber or retail dealer;

46 (11) A person who is not a wholesaler or subjobber in this
47 state sells tobacco products to a retail dealer;

48 (12) A person being a retail dealer purchases or acquires
49 tobacco products from any person other than a person who is a
50 wholesaler or subjobber in this state;

51 (13) The original wholesaler who purchases unstamped
52 cigarettes or tax-not-paid other tobacco products from a
53 manufacturer or other person fails to pay the excise tax imposed
54 by this article and fails to affix the required stamps or meter
55 impressions;

56 (14) A person who is not a wholesaler of tobacco products,
57 as defined in this article, has in his or her possession within this
58 state more than twenty packages of cigarettes, that do not bear
59 cigarette tax paid indicia of this state, stamps or meter impres-
60 sions, or other tax-not-paid tobacco products, if the retail value
61 of the tobacco products is more than thirty dollars for all tax-
62 not-paid tobacco products. The possession shall be presumed to
63 be for the purpose of evading the payment of the taxes imposed
64 or due on the tobacco products;

65 (15) The person violates any of the provisions of this article
66 or any lawful rule promulgated by the commissioner under
67 authority of article ten of this code.

68 (b) *Felony penalties.* — If any person commits any act set
69 forth in this subsection, the person shall be guilty of a felony
70 and, upon conviction thereof, shall be fined not less than
71 twenty-five thousand dollars nor more than fifty thousand
72 dollars, and imprisoned in a state correctional facility for a term
73 of not less than one year nor more than five years. Each
74 constitutes a separate felony:

75 (1) The person falsely or fraudulently makes, forges, alters
76 or counterfeits any stamps or meter impressions prescribed, or
77 defined, by the provisions of this article, or its related rules;

78 (2) The person knowingly and willfully makes, causes to be
79 made, purchases, receives or has in his or her possession, any
80 device for forging or counterfeiting any stamp or meter
81 impression;

82 (3) The person has in his or her possession any stamps not
83 properly issued by the commissioner, or the commissioner's
84 authorized employee, agent or deputy;

85 (4) The person tampers with or alters any stamping device
86 authorized by the commissioner; or

87 (5) The person uses more than once any stamp or meter
88 impression provided for and required by this article for the
89 purpose of evading the tax imposed by this article.

90 (c) *Deposit of penalties.* — All penalties collected under the
91 provisions of this section shall be paid into the general revenue
92 fund.

**§11-17-19b. Certain tax-not-paid tobacco products declared
contraband.**

1 (a) Whenever the commissioner or any of the commis-
2 sioner's authorized deputies, agents or employees, or any law-
3 enforcement officer in this state, discovers any tobacco prod-
4 ucts subject to tax, as provided by this article, and upon which
5 the tax has not been paid, as required by this article, the tobacco
6 products shall thereupon be considered to be contraband, and
7 the commissioner, or the commissioner's authorized deputy,
8 agent or employee, or any law-enforcement officer in this state,
9 may immediately seize and take possession of the tobacco
10 products without a warrant, and the tobacco products and

11 related property shall be forfeited to the state as provided in
12 article seven, chapter sixty-a of this code.

13 (b) Seizure of contraband shall not be considered to relieve
14 any person from fine or imprisonment, as provided in section
15 nineteen-a of this article, for any of the offenses set forth in said
16 section.

§11-17-19c. Magistrate courts have concurrent jurisdiction.

1 Magistrates have concurrent jurisdiction with any other
2 courts having jurisdiction for the trial of all misdemeanors
3 arising under this article.

§11-17-20. Transportation of unstamped cigarettes or tax-not-paid tobacco products; forfeitures and sales of cigarettes and equipment.

1 (a) *In general.* — Every person who transports tax-not-paid
2 tobacco products upon the public highways, waterways,
3 airways, roads or streets of this state shall have in his or her
4 actual possession invoices or delivery tickets for the tobacco
5 products.

6 (b) *Contents of delivery tickets.* — Delivery tickets shall
7 show: (1) The true name and the complete and exact address of
8 the consignor or seller; (2) the true name and complete and
9 exact address of the consignee or purchaser; (3) the quantity
10 and brands of the tobacco products transported; and (4) the true
11 name and complete and exact address of the person who has or
12 shall assume payment of the West Virginia taxes imposed by
13 this article, or the tax, if any, of the state or foreign country at
14 the point of ultimate destination: *Provided,* That any common
15 carrier which has issued a bill of lading for a shipment of
16 tobacco products and is without notice to itself or to any of its
17 agents or employees that the cigarettes are not stamped as
18 required by this article, or that the tax imposed by this article on

19 tobacco products other than cigarettes has not been paid, shall
20 be considered to have complied with this article and the vehicle
21 or vessel in which the tax-not-paid tobacco products are being
22 transported is not subject to confiscation under this section or
23 article seven, chapter sixty-a of this code.

24 (c) In the absence of invoices, delivery tickets or bills of
25 lading, as the case may be, that meet the requirements of
26 subsections (a) and (b) of this section, the tobacco products, the
27 vehicle or vessel in which the tobacco products are being
28 transported and any paraphernalia or devices used in connection
29 with the tax-not-paid tobacco products are declared to be
30 contraband goods and may be seized by the commissioner, or
31 the commissioner's authorized deputies, agents or employees,
32 or by any law-enforcement officer of the state, without a
33 warrant and shall be forfeited to the state as provided in article
34 seven, chapter sixty-a of this code.

§11-17-20a. Criminal penalty for unlawful transportation of tax-not-paid tobacco products.

1 Any person who transports tax-not-paid tobacco products
2 in violation of section twenty of this article is guilty of a
3 misdemeanor and, upon conviction thereof, shall be fined not
4 less than three hundred dollars nor more than five thousand
5 dollars, or imprisoned in the regional or county jail not more
6 than one year, or both fined and imprisoned.

§11-17-20b. Vending machines; presence of tax-not-paid tobacco products.

1 (a) If tax-not-paid tobacco products are found in any
2 vending machine, both the tax-not-paid tobacco products and
3 the vending machine are contraband goods within the meaning
4 of article seven, chapter sixty-a of this code, and may be seized
5 by the commissioner, at the discretion of the commissioner, or
6 the commissioner's authorized deputies, agents or employees,

7 or any law-enforcement officer in this state, without a warrant.
8 The provision of article seven, chapter sixty-a of this code
9 apply to the seizure and disposition of the contraband.

10 (b) Seizure and sale of the contraband shall not relieve the
11 owner of the property from any action by the commissioner for
12 violations of any other sections of this article.

**§11-17-23. Special study on impact of tax on tobacco products
other than cigarettes.**

1 (a) The tax commissioner and the commissioner of the
2 bureau of employment programs shall conduct a study to
3 analyze the impact of the provisions of this article on the
4 manufacturers and distributors of tobacco products other than
5 cigarettes and their employees. This study shall include an
6 analysis of the results of taxation of tobacco products other than
7 cigarettes, as provided in this article, as they affect employ-
8 ment, costs of operation and the overall economic impact upon
9 manufacturers and distributors and their employees.

10 (b) The commissioners shall report the results of the study
11 to the governor and the joint committee on government and
12 finance no later than the first day of February, two thousand
13 three, and shall submit recommendations on how to ameliorate
14 any negative impact upon manufacturers, distributors or
15 employees through proposed tax credits, job training programs,
16 extension of unemployment or other benefits, incentives or
17 other similar solutions.

**CHAPTER 60A. UNIFORM CONTROLLED
SUBSTANCES ACT.**

ARTICLE 7. WEST VIRGINIA CONTRABAND FORFEITURE ACT.

**§60A-7-703. Items subject to forfeiture; persons authorized to
seize property subject to forfeiture.**

1 (a) The following are subject to forfeiture:

2 (1) All controlled substances which have been manufac-
3 tured, distributed, dispensed or possessed in violation of this
4 chapter;

5 (2) All raw materials, products and equipment of any kind
6 which are used, or intended for use, in manufacturing, com-
7 pounding, processing, delivering, importing or exporting any
8 controlled substance in violation of this chapter;

9 (3) All tax-not-paid tobacco products, as that term is
10 defined in section two, article seventeen, chapter eleven of this
11 code, declared to be contraband under said article;

12 (4) All property which is used, or has been used, or is
13 intended for use, as a container for property described in
14 subdivision (1), (2) or (3) of this subsection;

15 (5) All conveyances, including aircraft, vehicles or vessels,
16 which are used, have been used, or are intended for use, to
17 transport, or in any manner to facilitate the transportation, sale,
18 receipt, possession or concealment of property described in
19 subdivision (1), (2) or (3) of this subsection, except that:

20 (i) A conveyance used by any person as a common carrier
21 in the transaction of business as a common carrier shall not be
22 forfeited under this section unless it appears that the person
23 owning the conveyance is a consenting party or privy to a
24 violation of this chapter;

25 (ii) A conveyance shall not be forfeited under the provi-
26 sions of this article if the person owning the conveyance
27 establishes that he or she neither knew, nor had reason to know,
28 that the conveyance was being employed or was likely to be
29 employed in a violation of this chapter; and

30 (iii) A bona fide security interest or other valid lien in any
31 conveyance shall not be forfeited under the provisions of this
32 article, unless the state proves by a preponderance of the
33 evidence that the holder of the security interest or lien either
34 knew, or had reason to know, that the conveyance was being
35 used or was likely to be used in a violation of this chapter;

36 (6) All books, records, research products and materials,
37 including formulas, microfilm, tapes and data which are used,
38 or have been used, or are intended for use, in violation of this
39 chapter;

40 (7) All moneys, negotiable instruments, securities or other
41 things of value furnished or intended to be furnished in viola-
42 tion of this chapter by any person in exchange for a controlled
43 substance, all proceeds traceable to the exchange and all
44 moneys, negotiable instruments and securities used, or which
45 have been used, or which are intended to be used to facilitate
46 any violation of this chapter: *Provided*, That no property may
47 be forfeited under this subdivision, to the extent of the interest
48 of an owner, by reason of any act or omission established by
49 that owner to have been committed or omitted without his or
50 her knowledge or consent; and

51 (8) All real property, including any right, title and interest
52 in any lot or tract of land, and any appurtenances or improve-
53 ments, which are used, or have been used, or are intended to be
54 used, in any manner or part, to commit or to facilitate the
55 commission of a violation of this chapter punishable by more
56 than one year imprisonment: *Provided*, That no property may
57 be forfeited under this subdivision, to the extent of an interest
58 of an owner, by reason of any act or omission established by
59 that owner to have been committed or omitted without his or
60 her knowledge or consent.

61 The requirements of this subsection pertaining to the
62 removal of seized property are not mandatory in the case of real
63 property and the appurtenances to the real property.

64 (b) Property subject to forfeiture under this article may be
65 seized by any person granted enforcement powers in section
66 five hundred one, article five of this chapter (hereinafter
67 referred to as the “appropriate person” in this article).

68 (c) Controlled substances listed in article two of this chapter
69 which are manufactured, possessed, transferred, sold or offered
70 for sale in violation of this chapter are contraband and shall be
71 seized and summarily forfeited to the state. Controlled sub-
72 stances which are seized or come into the possession of the
73 state, the owners of which are unknown, are contraband and
74 shall be summarily forfeited to the state upon the seizure of the
75 controlled substances.

76 (d) Species of plant from which controlled substances may
77 be derived which have been planted or cultivated in violation of
78 the provisions of this chapter, or of which the owners or
79 cultivators are unknown, or which are wild growths may be
80 seized and summarily forfeited to the state upon the seizure of
81 the plants.

82 (e) The failure, upon demand by the appropriate person, or
83 his or her authorized agent, of the person in occupancy or in
84 control of land or premises upon which the species of plants are
85 growing or being stored, to produce an appropriate registration,
86 or proof that he or she is the holder of an appropriate registra-
87 tion, constitutes authority for the seizure and forfeiture of the
88 plants.

89 (f) Notwithstanding any provision of this article to the
90 contrary, controlled substances listed in article two of this
91 chapter and species of plants from which controlled substances

92 may be derived shall either be destroyed or used only for
93 investigative or prosecutorial purposes.

94 (g) Notwithstanding any other provisions of this article to
95 the contrary, any items of real property or any items of tangible
96 personal property sold to a bona fide purchaser are not subject
97 to forfeiture unless the state establishes by clear and convincing
98 proof that the bona fide purchaser knew or should have known
99 that the property had in the previous three years next preceding
100 the sale been used in violation of this chapter or that the
101 property is a controlled substance.

CHAPTER 298

(S. B. 174 — By Senator Tomblin, Mr. President, By Request)

[Passed April 14, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section eight-e, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article twenty-four of said chapter by adding thereto a new section, designated section twenty-three-g, all relating to the application of tax credits for qualified rehabilitation buildings investment; and allowing for the distribution of the credits to owners of the entities earning the credits.

Be it enacted by the Legislature of West Virginia:

That section eight-e, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that article twenty-four of

said chapter be amended by adding thereto a new section, designated section twenty-three-g, all to read as follows:

PART I. GENERAL.

Article

21. Personal Income Tax.

24. Corporation Net Income Tax.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-8e. Carryback, carryforward.

1 (a) Any unused portion of the credit for qualified rehabili-
2 tated buildings investment authorized by section eight-a of this
3 article which may not be taken in the taxable year to which the
4 credit applies qualifies for carryback and carryforward treat-
5 ment subject to the identical general provisions under §39, Title
6 26 of the United States Code, as amended: *Provided*, That the
7 amount of the credit taken in a taxable year shall in no event
8 exceed the tax liability due for the taxable year.

9 (b) Effective for taxable years beginning on and after the
10 first day of January, two thousand one, credits granted to an
11 electing small business corporation (S corporation), limited
12 partnership, general partnership, limited liability company or
13 multiple owners of property shall be passed through to the
14 shareholders, partners, members or owners, either pro rata or
15 pursuant to an agreement among the shareholders, partners,
16 members or owners documenting an alternative distribution
17 method. The tax commissioner shall promulgate procedural
18 rules in accordance with article three, chapter twenty-nine-a of
19 this code that provide the method of reporting the alternative
20 method of distribution authorized by this section.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-23g. Application of credits.

1 Effective for taxable years beginning on and after the first
2 day of January, two thousand one, the credits granted, pursuant
3 to section twenty-three-a of this article, to an electing small
4 business corporation (S corporation), limited partnership,
5 general partnership, limited liability company or multiple
6 owners of property shall be passed through to the shareholders,
7 partners, members or owners, either pro rata or pursuant to an
8 agreement among the shareholders, partners, members or
9 owners documenting an alternative distribution method.
10 Taxpayers eligible for the credits may transfer, sell or assign the
11 credits.

CHAPTER 299

**(S. B. 405 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed March 28, 2001; 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 meaning 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.

§11-21-9. Meaning of terms.

1 (a) Any term used in this article has the same meaning as
2 when used in a comparable context in the laws of the United
3 States relating to income taxes unless a different meaning is
4 clearly required. Any reference in this article to the laws of the
5 United States means the provisions of the Internal Revenue
6 Code of 1986, as amended, and any other provisions of the laws
7 of the United States that relate to the determination of income
8 for federal income tax purposes. All amendments made to the
9 laws of the United States after the thirty-first day of December,
10 one thousand nine hundred ninety-nine, but prior to the first day
11 of January, two thousand one, shall be given effect in determin-
12 ing the taxes imposed by this article to the same extent those
13 changes are allowed for federal income tax purposes, whether
14 the changes are retroactive or prospective, but no amendment
15 to the laws of the United States made on or after the first day of
16 January, two thousand one, shall be given any effect.

17 (b) *Medical savings accounts.* — The term “taxable trust”
18 does not include a medical savings account established pursuant
19 to section twenty, article fifteen, chapter thirty-three of this
20 code or section fifteen, article sixteen of said chapter. Employer
21 contributions to a medical savings account established pursuant
22 to said sections are not “wages” for purposes of withholding
23 under section seventy-one of this article.

24 (c) *Surtax.* — The term “surtax” means the 20 percent
25 additional tax imposed on taxable withdrawals from a medical
26 savings account under section twenty, article fifteen, chapter
27 thirty-three of this code, and the 20 percent additional tax
28 imposed on taxable withdrawals from a medical savings
29 account under section fifteen, article sixteen of said chapter
30 which are collected by the tax commissioner as tax collected
31 under this article.

32 (d) *Effective date.* — The amendments to this section
33 enacted in the year two thousand one are retroactive to the
34 extent allowable under federal income tax law. With respect to
35 taxable years that began prior to the first day of January, two
36 thousand, the law in effect for each of those years shall be fully
37 preserved as to that year, except as provided in this section.

CHAPTER 300

(Com. Sub. for S. B. 447 — By Senators Bowman,
Kessler, Edgell and McKenzie)

[Passed April 14, 2001; in effect July 1, 2001. 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-d, relating to providing a personal income tax adjustment to the gross income of certain retirees receiving pensions from defined benefit pension plans that terminated and are being paid at a reduced maximum benefit guarantee; and providing a sunset provision.

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-d, to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

PART I. GENERAL.

§11-21-12d. Additional modification reducing federal adjusted gross income.

1 In addition to amounts authorized to be subtracted from
2 federal adjusted gross income pursuant to subsection (c),
3 section twelve of this article, any person who retires under an
4 employer-provided defined benefit pension plan that terminates
5 prior to or after the retirement of that person and the pension
6 plan is covered by a guarantor whose maximum benefit
7 guarantee is less than the maximum benefit to which the retiree
8 was entitled had the plan not terminated may subtract annually
9 from his or her federal adjusted income a sum equal to the
10 difference in the amount of the maximum annual pension
11 benefit the person would have received for such tax year had
12 the plan not terminated and the maximum annual pension
13 benefit actually received from the guarantor under a benefit
14 guarantee plan: *Provided*, That if the tax commissioner deter-
15 mines that this adjustment reduces the revenues of the state by
16 two million dollars or more in any one year, then the tax
17 commissioner shall reduce the percentage of the reduction to a
18 level at which the commissioner believes will reduce the cost
19 of the adjustment to two million dollars for the next year. This
20 tax adjustment shall be effective for taxable years beginning on
21 and after the first day of January, two thousand one: *Provided*,
22 *however*, That the adjustment shall terminate for the tax years
23 on or after the first day of January, two thousand four. This
24 modification is available regardless of the type of return form
25 filed.

CHAPTER 301

(S. B. 440 — By Senators Tomblin, Mr. President,
and Sprouse, By Request of the Executive)

[Passed March 28, 2001; 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.

1 (a) Any term used in this article has the same meaning as
2 when used in a comparable context in the laws of the United
3 States relating to federal income taxes unless a different
4 meaning is clearly required by the context or by definition in
5 this article. Any reference in this article to the laws of the
6 United States means the provisions of the Internal Revenue
7 Code of 1986, as amended, and any other provisions of the laws
8 of the United States that relate to the determination of income
9 for federal income tax purposes. All amendments made to the
10 laws of the United States after the thirty-first day of December,
11 one thousand nine hundred ninety-nine, but prior to the first day
12 of January, two thousand one, shall be given effect in determin-
13 ing the taxes imposed by this article to the same extent those
14 changes are allowed for federal income tax purposes, whether
15 the changes are retroactive or prospective, but no amendment
16 to the laws of the United States made on or after the first day of
17 January, two thousand one, shall be given any effect.

18 (b) The term “Internal Revenue Code of 1986” means the
19 Internal Revenue Code of the United States enacted by the
20 “Federal Tax Reform Act of 1986” and includes the provisions
21 of law formerly known as the Internal Revenue Code of 1954,
22 as amended, and in effect when the “Federal Tax Reform Act
23 of 1986” was enacted that were not amended or repealed by the
24 “Federal Tax Reform Act of 1986”. Except when inappropriate,
25 any references in any law, executive order or other document:

26 (1) To the Internal Revenue Code of 1954 includes refer-
27 ence to the Internal Revenue Code of 1986; and

28 (2) To the Internal Revenue Code of 1986 shall include a
29 reference to the provisions of law formerly known as the
30 Internal Revenue Code of 1954.

31 (c) *Effective date.* — The amendments to this section
32 enacted in the year two thousand one are retroactive to the
33 extent allowable under federal income tax law. With respect to
34 taxable years that began prior to the first day of January, two
35 thousand, the law in effect for each of those years shall be fully
36 preserved as to that year, except as provided in this section.

CHAPTER 302

(Com. Sub. for S. B. 177 — By Senators Craig, McCabe,
Prezioso, Plymale, Oliverio, Sharpe, McKenzie, Sprouse, Boley,
Love, Mitchell, Bailey, Anderson, Facemyer, Bowman, Minard,
Rowe, Kessler, Redd, Heimick, Ross, Snyder, Minear, Unger,
Jackson, Edgell, Hunter, Caldwell, Fanning, Chafin, Tomblin,
Mr. President, Deem and Wooton)

[Passed April 14, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend article twenty-seven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-six, relating to phasing out the health care provider tax imposed on gross receipts of services performed by certain practitioners.

Be it enacted by the Legislature of West Virginia:

That article twenty-seven, 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 thirty-six, to read as follows:

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

§11-27-36. Phase out and elimination of tax on services of individual practitioners.

1 (a) Effective the first day of July, two thousand one, the rate
2 of the tax imposed under:

3 (1) Sections five, six, twelve, thirteen, fourteen, seventeen,
4 eighteen and nineteen of this article is reduced to one and five
5 hundred seventy-five thousandths percent; and

6 (2) Section sixteen of this article is reduced to one and
7 eight-tenths percent; and

8 (3) Section seven of this article is reduced to four and
9 ninety-five one hundredths percent.

10 (b) Effective the first day of July, two thousand two, the tax
11 imposed under:

12 (1) Sections five, six, twelve, thirteen, fourteen, seventeen,
13 eighteen and nineteen of this article is reduced to one and four-
14 tenths percent; and

15 (2) Section sixteen of this article is reduced to one and six-
16 tenths percent; and

17 (3) Section seven of this article is reduced to four and four-
18 tenths percent.

19 (c) Effective the first day of July, two thousand three, the
20 tax imposed under:

21 (1) Sections five, six, twelve, thirteen, fourteen, seventeen,
22 eighteen and nineteen of this article is reduced to one and two
23 hundred twenty-five thousandths percent; and

24 (2) Section sixteen of this article is reduced to one and four-
25 tenths percent; and

26 (3) Section seven of this article is reduced to three and
27 eighty-five hundredths percent.

28 (d) Effective the first day of July, two thousand four, the tax
29 imposed under:

30 (1) Sections five, six, twelve, thirteen, fourteen, seventeen,
31 eighteen and nineteen of this article is reduced to one and five-
32 hundredths percent; and

33 (2) Section sixteen of this article is reduced to one and two
34 tenths percent; and

35 (3) Section seven of this article is reduced to three and
36 three-tenths percent.

37 (e) Effective the first day of July, two thousand five, the tax
38 imposed under:

39 (1) Sections five, six, twelve, thirteen, fourteen, seventeen,
40 eighteen and nineteen of this article is reduced to eight hundred
41 seventy-five thousandths percent; and

42 (2) Section sixteen of this article is reduced to one percent;
43 and

44 (3) Section seven of this article is reduced to two and
45 seventy-five hundredths percent.

46 (f) Effective the first day of July, two thousand six, the tax
47 imposed under:

48 (1) Sections five, six, twelve, thirteen, fourteen, seventeen,
49 eighteen and nineteen of this article is reduced to seven-tenths
50 percent; and

51 (2) Section sixteen of this article is reduced to eight-tenths
52 percent; and

53 (3) Section seven of this article is reduced to two and two-
54 tenths percent.

55 (g) Effective the first day of July, two thousand seven, the
56 tax imposed under:

57 (1) Sections five, six, twelve, thirteen, fourteen, seventeen,
58 eighteen and nineteen of this article is reduced to five hundred
59 twenty-five thousandths percent; and

60 (2) Section sixteen of this article is reduced to six-tenths
61 percent; and

62 (3) Section seven of this article is reduced to one and sixty-
63 five hundredths percent.

64 (h) Effective the first day of July, two thousand eight, the
65 tax imposed under:

66 (1) Sections five, six, twelve, thirteen, fourteen, seventeen,
67 eighteen and nineteen of this article is reduced to thirty-five
68 hundredths percent; and

69 (2) Section sixteen of this article is reduced to four-tenths
70 percent; and

71 (3) Section seven of this article is reduced to one and one-
72 tenth percent.

73 (i) Effective the first day of July, two thousand nine, the tax
74 imposed under:

75 (1) Sections five, six, twelve, thirteen, fourteen, seventeen,
76 eighteen and nineteen of this article is reduced to one hundred
77 seventy-five thousandths percent; and

78 (2) Section sixteen of this article is reduced to two-tenths
79 percent; and

80 (3) Section seven of this article is reduced to fifty-five
81 hundredths percent.

82 (j) Effective the first day of July, two thousand ten, the tax
83 imposed under sections five, six, seven, twelve, thirteen,
84 fourteen, sixteen, seventeen, eighteen and nineteen of this
85 article is eliminated.

CHAPTER 303

(Com. Sub. for S. B. 661 — By Senators Fanning and Ross)

[Passed April 14, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article eleven-a, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections, designated sections four and

five, all relating to providing a limit of two hundred million dollars on the maximum appeal bond that can be required in litigation in which an appellant is a signatory to a tobacco settlement; providing for applicability; and exceptions.

Be it enacted by the Legislature of West Virginia:

That section one, article eleven-a, chapter 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 two new sections, designated sections four and five, all to read as follows:

ARTICLE 11A. LEGISLATIVE APPROPRIATION OF TOBACCO SETTLEMENT FUNDS.

§4-11A-1. Legislative findings and purpose.

§4-11A-4. Limitation on appeal bond.

§4-11A-5. Applicability.

§4-11A-1. Legislative findings and purpose.

1 (a) On the twenty-third day of November, one thousand
2 nine hundred ninety-eight, tobacco product manufacturers
3 entered into a settlement agreement with the state. This “master
4 settlement agreement” releases those manufacturers from past,
5 present and specific future claims against them in return for
6 payment of annual sums of money to the state, obligates the
7 manufacturers to change their advertising and marketing
8 practices and requires the establishment by the manufacturers
9 of a national foundation for the interests of public health.

10 (b) The revenues received pursuant to the master settlement
11 agreement are directly related to the past, present and future
12 costs incurred by the state for the treatment of tobacco-related
13 illnesses. The purpose of this article is to preserve the revenues
14 received from the settlement.

15 (c) The receipt of funds in accordance with the master
16 settlement agreement shall be deposited only in accordance
17 with the provisions of this article.

18 (d) West Virginia receives approximately seventy million
19 dollars in revenue each year under the terms of the master
20 settlement agreement with the tobacco manufacturers. This
21 revenue is used to fund programs of vital importance to the
22 people of West Virginia, and the Legislature finds that it is in
23 the best interest of the people of this state to protect these
24 revenues.

§4-11A-4. Limitation on appeal bond.

1 The bond that any appellant who is a signatory or a
2 successor to a signatory of the master settlement agreement
3 may be required to post to stay execution on a judgment during
4 an appeal in any cause of action shall be set in accordance with
5 the provisions of section fourteen, article five, chapter fifty-
6 eight of this code and the West Virginia rules of civil proce-
7 dure: *Provided*, That an appeal bond may not exceed one
8 hundred million dollars for compensatory damages and all other
9 portions of a judgment other than punitive damages and one
10 hundred million dollars for punitive damages unless the
11 appellee proves by a preponderance of the evidence that the
12 appellant or appellants are purposefully dissipating or diverting
13 assets outside of the ordinary course of its business to the effect
14 that the ability to pay the ultimate judgment is impaired. For
15 purposes of this section, multiple judgments resulting from
16 cases that have been consolidated or aggregated for purposes of
17 trial proceedings shall be treated as a single judgment.

§4-11A-5. Applicability.

1 The provisions of section four of this article apply to all
2 actions pending in the courts of this state on the effective date
3 of this section and to any action filed in this state on or after the

4 effective date: *Provided*, That the provisions of section four of
5 this article providing for the maximum amount of an appeal
6 bond shall not apply in any action brought by any signatory to
7 the master settlement agreement seeking to enforce compliance
8 with the terms of the master settlement agreement or for a
9 breach of the master settlement agreement.

CHAPTER 304

(H. B. 3020 — By Mr. Speaker, Mr. Kiss, and Delegates
Compton, Staton, Amores, Hall, Michael and Perdue)

[Passed April 14, 2001; 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 nine, relating to prohibiting the importation, sale or distribution of bidis tobacco products; defining terms and creating misdemeanor penalties.

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 nine, to read as follows:

ARTICLE 9A. TOBACCO USAGE RESTRICTIONS.

§16-9A-9. Selling of bidis prohibited; penalties.

1 (a) The Legislature finds that young people in this state
2 have been enticed into smoking or using tobacco products by
3 first using or experimenting with hand-rolled, flavored tobacco
4 products called “bidis” or “beedies.” Recognizing that the use

5 of bidis is an emerging public health problem, the Legislature
6 hereby adopts a public policy that the tobacco products known
7 as “bidis” should not be imported, sold or distributed in the
8 state of West Virginia.

9 (b) Notwithstanding any other provision of law, no person
10 or business entity shall possess, import, sell, offer for sale or
11 distribute any tobacco product commonly referred to as “bidis”
12 or “beedies.”

13 (c) For purposes of this section, “bidis” or “beedies” means
14 a product containing tobacco that is wrapped in temburni leaf
15 or leaves (*diospyros melanoxylon*) or tendu leaf or leaves
16 (*diospyros exculpra*), or any other product or substance that is
17 offered to or purchased by consumers as bidis or beedies. As
18 used in this section, the terms “bidis” and “beedies” have the
19 same meaning and may be used interchangeably.

20 (d) Any person violating the provisions of this section is
21 guilty of a misdemeanor and, upon conviction thereof, shall be
22 fined not more than five hundred dollars; and upon a second or
23 subsequent conviction thereof, shall be fined not less than one
24 thousand nor more than five thousand dollars for each offense,
25 or confined in a county or regional jail not more than six
26 months, or both.

CHAPTER 305

**(S. B. 272 — By Senators Ross, Redd, Caldwell, Kessler,
Love, Olliverio, Rowe, Facemyer and McKenzie**

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]

AN to amend and reenact section sixty-four, article one, chapter
seventeen-c of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, relating to excluding certain vehicles carrying children to medical and dental facilities from the definition of "passenger van".

Be it enacted by the Legislature of West Virginia:

That section sixty-four, article one, 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 1. WORDS AND PHRASES DEFINED.

§17C-1-64. Passenger van.

1 "Passenger van" means any van or other motor vehicle
2 owned by any agency, business or other legal entity and
3 operated for the purpose of transportation of children under the
4 age of eighteen years, other than a van utilized for private use,
5 taxicab, bus or school bus. Passenger vans include, but are not
6 limited to, vehicles used by day-care centers, after-school
7 centers and nursery schools: *Provided*, That the term "passen-
8 ger van" does not include any van or other motor vehicle which
9 is utilized for the specific purpose of transporting children to
10 medical facilities for the purpose of medical or dental treatment
11 and which loads and unloads the children on private property,
12 making no stops for loading or unloading along public roads or
13 highways.

CHAPTER 306

(S. B. 732 — By Senators Wooton, Caldwell, Minard, Oliverio,
Redd, Ross, Rowe, Snyder, Facemyer and McKenzie)

[Passed April 14, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section six, article six-a, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one hundred nine, three hundred thirty-one, three hundred thirty-four, three hundred thirty-six, four hundred six, four hundred eight, five hundred twenty-five and seven hundred five, article nine, chapter forty-six of said code, as contained in chapter two hundred seventy-two, acts of the Legislature, regular session, two thousand, relating generally to secured transactions; directing the office of debt management to report to the members of the joint committee on government and finance; excluding transfers by a government or governmental unit from application of the article; preventing assignment of the proceeds of a viatical settlement; preventing assignment of the proceeds of a workers compensation settlement; preventing assignment of the proceeds of a special needs trust from and making certain technical corrections.

Be it enacted by the Legislature of West Virginia:

That section six, article six-a, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections one hundred nine, three hundred thirty-one, three hundred thirty-four, three hundred thirty-six, four hundred six, four hundred eight, five hundred twenty-five and seven hundred five, article nine, chapter forty-six of said code, as contained in chapter two hundred seventy-two, acts of the Legislature, regular session, two thousand, be amended and reenacted, all to read as follows:

Chapter

12. Public Moneys and Securities.

46. Uniform Commercial Code.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 6A. THE DEBT MANAGEMENT ACT OF 1991.

§12-6A-6. Debt information reporting.

1 (a) Within fifteen days following the end of each calendar
2 quarter, each state spending unit shall provide the division and
3 the legislative auditor, in the manner provided by this article
4 and in such form and detail as the state treasurer may by
5 regulation require, a statement of the total debt of each such
6 state spending unit incurred during the calendar quarter and
7 owing at the end of such calendar quarter, which statement shall
8 include, but not be limited to, the name of the state spending
9 unit, the amounts and types of debt incurred during the calendar
10 quarter and outstanding at the end of the calendar quarter, the
11 cost and expenses of incurring the debt, the maturity date of
12 each debt, the terms and conditions of the debt, the current debt
13 service on the debt, the current interest rate on the debt, the
14 source of the proceeds utilized for repayment of the debt, the
15 amounts of repayment during the calendar quarter, the repay-
16 ment schedule and the security for the debt. A state spending
17 unit having no outstanding debt shall not be required to provide
18 the quarterly report but shall file an annual report, on forms
19 established by the division of debt management: *Provided*, That
20 the state spending unit shall immediately notify the division of
21 debt management of any change in the spending unit's out-
22 standing debt condition.

23 (b) Not less than thirty days prior to a proposed offering of
24 debt to be issued by a state spending unit, written notice of such
25 proposed offering and the terms thereof shall be given to the
26 division by such state spending unit in the form as the division
27 may by regulation require. Within thirty days after closing, the
28 terms shall be reported to the division in the form as the
29 division may by regulation require.

30 (c) On or before the thirty-first day of January and the
31 thirty-first day of July of each year, the treasurer shall prepare
32 and issue a report of all debt of the state and its spending units
33 and of all proposed debt issuances of which the treasurer has
34 received notice and shall furnish a copy of such report to the

35 governor, the president of the Senate, the speaker of the House
 36 of Delegates, the members of the joint committee on govern-
 37 ment and finance, the legislative auditor and upon request to
 38 any other legislative committee and any member of the Legisla-
 39 ture. The report shall be kept available for inspection by any
 40 citizen of the state. The treasurer shall also prepare updated
 41 reports of all debt of the state and its spending units which shall
 42 be available for inspection at the office of the state treasurer on
 43 or before the thirty-first day of March and the thirtieth day of
 44 September of each year.

CHAPTER 46. UNIFORM COMMERCIAL CODE.

ARTICLE 9. SECURED TRANSACTIONS.

SUBPART 2. APPLICABILITY OF ARTICLE.

§46-9-109. Scope.

§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.

§46-9-334. Priority of security interests in fixtures and crops.

§46-9-336. Commingled goods.

§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.

§46-9-408. Restrictions on assignment of promissory notes, health-care-insurance receivables and certain general intangibles ineffective.

§46-9-525. Fees.

§46-9-705. Effectiveness of action taken before effective date.

§46-9-109. Scope.

1 (a) **General scope of article.** Except as otherwise provided
 2 in subsections (c) and (d) of this section, this article applies to:

3 (1) A transaction, regardless of its form, that creates a
 4 security interest in personal property or fixtures by contract;

5 (2) An agricultural lien;

6 (3) A sale of accounts, chattel paper, payment intangibles
7 or promissory notes;

8 (4) A consignment;

9 (5) A security interest arising under section 2-401, 2-505,
10 2-711(3) or 2A-508(5) as provided in section 9-110; and

11 (6) A security interest arising under section 4-210 or 5-118.

12 (b) **Security interest in secured obligation.** The applica-
13 tion of this article to a security interest in a secured obligation
14 is not affected by the fact that the obligation is itself secured by
15 a transaction or interest to which this article does not apply.

16 (c) **Extent to which article does not apply.** This article
17 does not apply to the extent that:

18 (1) A statute, regulation or treaty of the United States
19 preempts this article; or

20 (2) The rights of a transferee beneficiary or nominated
21 person under a letter of credit are independent and superior
22 under section 5-114.

23 (d) **Inapplicability of article.** This article does not apply
24 to:

25 (1) A landlord's lien, other than an agricultural lien;

26 (2) A lien, other than an agricultural lien, given by statute
27 or other rule of law for services or materials, but section 9-333
28 applies with respect to priority of the lien;

29 (3) An assignment of a claim for wages, salary or other
30 compensation of an employee;

31 (4) A sale of accounts, chattel paper, payment intangibles
32 or promissory notes as part of a sale of the business out of
33 which they arose;

34 (5) An assignment of accounts, chattel paper, payment
35 intangibles or promissory notes which is for the purpose of
36 collection only;

37 (6) An assignment of a right to payment under a contract to
38 an assignee that is also obligated to perform under the contract;

39 (7) An assignment of a single account, payment intangible
40 or promissory note to an assignee in full or partial satisfaction
41 of a preexisting indebtedness;

42 (8) A transfer of an interest in or an assignment of a claim
43 under a policy of insurance, other than an assignment by or to
44 a health-care provider of a health-care-insurance receivable and
45 any subsequent assignment of the right to payment, but sections
46 9-315 and 9-322 apply with respect to proceeds and priorities
47 in proceeds;

48 (9) An assignment of a right represented by a judgment,
49 other than a judgment taken on a right to payment that was
50 collateral;

51 (10) A right of recoupment or set-off, but:

52 (A) Section 9-340 applies with respect to the effectiveness
53 of rights of recoupment or set-off against deposit accounts; and

54 (B) Section 9-404 applies with respect to defenses or claims
55 of an account debtor;

56 (11) The creation or transfer of an interest in or lien on real
57 property, including a lease or rents thereunder, except to the
58 extent that provision is made for:

- 59 (A) Liens on real property in sections 9-203 and 9-308;
- 60 (B) Fixtures in section 9-334;
- 61 (C) Fixture filings in sections 9-501, 9-502, 9-512, 9-516,
62 and 9-519; and
- 63 (D) Security agreements covering personal and real
64 property in section 9-604;
- 65 (12) An assignment of a claim arising in tort, other than a
66 commercial tort claim, but sections 9-315 and 9-322 apply with
67 respect to proceeds and priorities in proceeds;
- 68 (13) An assignment of a deposit account in a consumer
69 transaction, but sections 9-315 and 9-322 apply with respect to
70 proceeds and priorities in proceeds; or
- 71 (14) A transfer by a government or a governmental unit.

PART 3. PERFECTION AND PRIORITY.

§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.

1 (a) **Rights under articles three, seven and eight not**
2 **limited.** This article does not limit the rights of a holder in due
3 course of a negotiable instrument, a holder to which a negotia-
4 ble document of title has been duly negotiated or a protected
5 purchaser of a security. These holders or purchasers take
6 priority over an earlier security interest, even if perfected, to the
7 extent provided in articles three, seven and eight.

8 (b) **Protection under article eight.** This article does not
9 limit the rights of or impose liability on a person to the extent

10 that the person is protected against the assertion of a claim
11 under article eight.

12 (c) **Filing not notice.** Filing under this article does not
13 constitute notice of a claim or defense to the holders, or
14 purchasers, or persons described in subsections (a) and (b) of
15 this section.

§46-9-334. Priority of security interests in fixtures and crops.

1 (a) **Security interest in fixtures under this article.** A
2 security interest under this article may be created in goods that
3 are fixtures or may continue in goods that become fixtures. A
4 security interest does not exist under this article in ordinary
5 building materials incorporated into an improvement on land.

6 (b) **Security interest in fixtures under real-property law.**
7 This article does not prevent creation of an encumbrance upon
8 fixtures under real property law.

9 (c) **General rule: subordination of security interest in**
10 **fixtures.** In cases not governed by subsections (d) through (h),
11 inclusive, of this section, a security interest in fixtures is
12 subordinate to a conflicting interest of an encumbrancer or
13 owner of the related real property other than the debtor.

14 (d) **Fixtures purchase-money priority.** Except as other-
15 wise provided in subsection (h) of this section, a perfected
16 security interest in fixtures has priority over a conflicting
17 interest of an encumbrancer or owner of the real property if the
18 debtor has an interest of record in or is in possession of the real
19 property and:

20 (1) The security interest is a purchase-money security
21 interest;

22 (2) The interest of the encumbrancer or owner arises before
23 the goods become fixtures; and

24 (3) The security interest is perfected by a fixture filing
25 before the goods become fixtures or within twenty days
26 thereafter.

27 **(e) Priority of security interest in fixtures over interests**
28 **in real property.** A perfected security interest in fixtures has
29 priority over a conflicting interest of an encumbrancer or owner
30 of the real property if:

31 (1) The debtor has an interest of record in the real property
32 or is in possession of the real property and the security interest:

33 (A) Is perfected by a fixture filing before the interest of the
34 encumbrancer or owner is of record; and

35 (B) Has priority over any conflicting interest of a predeces-
36 sor in title of the encumbrancer or owner;

37 (2) Before the goods become fixtures, the security interest
38 is perfected by any method permitted by this article and the
39 fixtures are readily removable:

40 (A) Factory or office machines;

41 (B) Equipment that is not primarily used or leased for use
42 in the operation of the real property; or

43 (C) Replacements of domestic appliances that are consumer
44 goods;

45 (3) The conflicting interest is a lien on the real property
46 obtained by legal or equitable proceedings after the security
47 interest was perfected by any method permitted by this article;
48 or

49 (4) The security interest is:

50 (A) Created in a manufactured home in a manufactured-
51 home transaction; and

52 (B) Perfected pursuant to a statute described in section
53 9-311(a)(2).

54 (f) **Priority based on consent, disclaimer or right to**
55 **remove.** A security interest in fixtures, whether or not per-
56 fected, has priority over a conflicting interest of an encum-
57 brancer or owner of the real property if:

58 (1) The encumbrancer or owner has, in an authenticated
59 record, consented to the security interest or disclaimed an
60 interest in the goods as fixtures; or

61 (2) The debtor has a right to remove the goods as against
62 the encumbrancer or owner.

63 (g) **Continuation of subsection (f)(2) priority.** The
64 priority of the security interest under subsection (f)(2) of this
65 section continues for a reasonable time if the debtor's right to
66 remove the goods as against the encumbrancer or owner
67 terminates.

68 (h) **Priority of construction mortgage.** A mortgage is a
69 construction mortgage to the extent that it secures an obligation
70 incurred for the construction of an improvement on land,
71 including the acquisition cost of the land, if a recorded record
72 of the mortgage so indicates. Except as otherwise provided in
73 subsections (e) and (f) of this section, a security interest in
74 fixtures is subordinate to a construction mortgage if a record of
75 the mortgage is recorded before the goods become fixtures and
76 the goods become fixtures before the completion of the
77 construction. A mortgage has this priority to the same extent as

78 a construction mortgage to the extent that it is given to refi-
79 nance a construction mortgage.

80 (i) **Priority of security interest in crops.** A perfected
81 security interest in crops growing on real property has priority
82 over a conflicting interest of an encumbrancer or owner of the
83 real property if the debtor has an interest of record in or is in
84 possession of the real property.

85 (j) **Subsection (i) prevails.** Subsection (i) of this section
86 prevails over any inconsistent provision of an existing or future
87 statute, rule or regulation of this state unless the provision is
88 contained in a statute of this state, refers expressly to this
89 section and states that the provision prevails over this section.

§46-9-336. **Commingled goods.**

1 (a) **“Commingled goods.”** In this section, “commingled
2 goods” means goods that are physically united with other goods
3 in such a manner that their identity is lost in a product or mass.

4 (b) **No security interest in commingled goods as such.** A
5 security interest does not exist in commingled goods as such.
6 However, a security interest may attach to a product or mass
7 that results when goods become commingled goods.

8 (c) **Attachment of security interest to product or mass.**
9 If collateral becomes commingled goods, a security interest
10 attaches to the product or mass.

11 (d) **Perfection of security interest.** If a security interest in
12 collateral is perfected before the collateral becomes commin-
13 gled goods, the security interest that attaches to the product or
14 mass under subsection (c) of this section is perfected.

15 (e) **Priority of security interest.** Except as otherwise
16 provided in subsection (f) of this section, the other provisions

17 of this part determine the priority of a security interest that
18 attaches to the product or mass under subsection (c) of this
19 section.

20 (f) **Conflicting security interests in product or mass.** If
21 more than one security interest attaches to the product or mass
22 under subsection (c) of this section, the following rules deter-
23 mine priority:

24 (1) A security interest that is perfected under subsection (d)
25 has priority over a security interest that is unperfected at the
26 time the collateral becomes commingled goods.

27 (2) If more than one security interest is perfected under
28 subsection (d) of this section, the security interests rank equally
29 in proportion to the value of the collateral at the time it became
30 commingled goods.

PART 4. RIGHTS OF THIRD PARTIES.

**§46-9-406. Discharge of account debtor; notification of assign-
ment; identification and proof of assignment;
restrictions on assignment of accounts, chattel
paper, payment intangibles and promissory notes
ineffective.**

1 (a) **Discharge of account debtor; effect of notification.**
2 Subject to subsections (b) through (i), an account debtor on an
3 account, chattel paper or a payment intangible may discharge
4 its obligation by paying the assignor until, but not after, the
5 account debtor receives a notification, authenticated by the
6 assignor or the assignee, that the amount due or to become due
7 has been assigned and that payment is to be made to the
8 assignee. After receipt of the notification, the account debtor
9 may discharge its obligation by paying the assignee and may
10 not discharge the obligation by paying the assignor.

11 (b) **When notification ineffective.** Subject to subsection
12 (h) of this section, notification is ineffective under subsection
13 (a) of this section:

14 (1) If it does not reasonably identify the rights assigned;

15 (2) To the extent that an agreement between an account
16 debtor and a seller of a payment intangible limits the account
17 debtor's duty to pay a person other than the seller and the
18 limitation is effective under law other than this article; or

19 (3) At the option of an account debtor, if the notification
20 notifies the account debtor to make less than the full amount of
21 any installment or other periodic payment to the assignee, even
22 if:

23 (A) Only a portion of the account, chattel paper or payment
24 intangible has been assigned to that assignee;

25 (B) A portion has been assigned to another assignee; or

26 (C) The account debtor knows that the assignment to that
27 assignee is limited.

28 (c) **Proof of assignment.** Subject to subsection (h) of this
29 section, if requested by the account debtor, an assignee shall
30 seasonably furnish reasonable proof that the assignment has
31 been made. Unless the assignee complies, the account debtor
32 may discharge its obligation by paying the assignor, even if the
33 account debtor has received a notification under subsection (a)
34 of this section.

35 (d) **Term restricting assignment generally ineffective.**
36 Except as otherwise provided in subsection (e) of this section
37 and sections 2A-303 and 9-407, and subject to subsection (h) of
38 this section, a term in an agreement between an account debtor

39 and an assignor or in a promissory note is ineffective to the
40 extent that it:

41 (1) Prohibits, restricts or requires the consent of the account
42 debtor or person obligated on the promissory note to the
43 assignment or transfer of, or the creation, attachment, perfection
44 or enforcement of a security interest in, the account, chattel
45 paper, payment intangible or promissory note; or

46 (2) Provides that the assignment or transfer or the creation,
47 attachment, perfection or enforcement of the security interest
48 may give rise to a default, breach, right of recoupment, claim,
49 defense, termination, right of termination or remedy under the
50 account, chattel paper, payment intangible or promissory note.

51 (e) **Inapplicability of subsection (d) to certain sales.**
52 Subsection (d) of this section does not apply to the sale of a
53 payment intangible or promissory note.

54 (f) **Legal restrictions on assignment generally ineffective.** Except as otherwise provided in sections 2A-303 and 9-
55 407 and subject to subsections (h) and (i) of this section, a rule
56 of law, statute or regulation that prohibits, restricts or requires
57 the consent of a government, governmental body or official, or
58 account debtor to the assignment or transfer of, or creation of
59 a security interest in, an account or chattel paper is ineffective
60 to the extent that the rule of law, statute or regulation:
61

62 (1) Prohibits, restricts or requires the consent of the
63 government, governmental body or official, or account debtor
64 to the assignment or transfer of, or the creation, attachment,
65 perfection or enforcement of a security interest in the account
66 or chattel paper; or

67 (2) Provides that the assignment or transfer or the creation,
68 attachment, perfection or enforcement of the security interest
69 may give rise to a default, breach, right of recoupment, claim,

70 defense, termination, right of termination or remedy under the
71 account or chattel paper.

72 (g) **Subsection (b)(3) not waivable.** Subject to subsection
73 (h) of this section, an account debtor may not waive or vary its
74 option under subsection (b)(3) of this section.

75 (h) **Rule for individual under other law.** This section is
76 subject to law other than this article which establishes a
77 different rule for an account debtor who is an individual and
78 who incurred the obligation primarily for personal, family or
79 household purposes.

80 (i) **Inapplicability.** This section does not apply to an
81 assignment of a health-care-insurance receivable. Subsection (f)
82 does not apply to an assignment or transfer of, or the creation,
83 attachment, perfection or enforcement of a security interest in,
84 a right the transfer of which is prohibited or restricted by any of
85 the following statutes to the extent that the statute is inconsis-
86 tent with subsection (f): Chapter twenty-three, article four,
87 section eighteen, Chapter forty-six-a, article six-h, and a claim
88 or right to receive benefits under a special needs trust as
89 described in 42 U.S.C. §1396p(d)(4).

90 (j) **Section prevails over specified inconsistent law.** This
91 section prevails over any inconsistent provision of an existing
92 or future statute, rule or regulation of this state unless the
93 provision is contained in a statute of this state, refers expressly
94 to this section and states that the provision prevails over this
95 section.

§46-9-408. Restrictions on assignment of promissory notes, health-care-insurance receivables and certain general intangibles ineffective.

1 (a) **Term restricting assignment generally ineffective.**
2 Except as otherwise provided in subsection (b) of this section,
3 a term in a promissory note or in an agreement between an

4 account debtor and a debtor which relates to a health-care-
5 insurance receivable or a general intangible, including a
6 contract, permit, license or franchise, and which term prohibits,
7 restricts or requires the consent of the person obligated on the
8 promissory note or the account debtor to, the assignment or
9 transfer of or creation, attachment or perfection of a security
10 interest in, the promissory note, health-care-insurance receiv-
11 able or general intangible, is ineffective to the extent that the
12 term:

13 (1) Would impair the creation, attachment or perfection of
14 a security interest; or

15 (2) Provides that the assignment or transfer or the creation,
16 attachment or perfection of the security interest may give rise
17 to a default, breach, right of recoupment, claim, defense,
18 termination, right of termination or remedy under the promis-
19 sory note, health-care-insurance receivable or general intangi-
20 ble.

21 (b) **Applicability of subsection (a) to sales of certain**
22 **rights to payment.** Subsection (a) of this section applies to a
23 security interest in a payment intangible or promissory note
24 only if the security interest arises out of a sale of the payment
25 intangible or promissory note.

26 (c) **Legal restrictions on assignment generally ineffec-**
27 **tive.** A rule of law, statute or regulation that prohibits, restricts
28 or requires the consent of a government, governmental body or
29 official, person obligated on a promissory note, or account
30 debtor to the assignment or transfer of, or creation of a security
31 interest in, a promissory note, health-care-insurance receivable
32 or general intangible, including a contract, permit, license or
33 franchise between an account debtor and a debtor, is ineffective
34 to the extent that the rule of law, statute or regulation:

35 (1) Would impair the creation, attachment or perfection of
36 a security interest; or

37 (2) Provides that the assignment or transfer or the creation,
38 attachment or perfection of the security interest may give rise
39 to a default, breach, right of recoupment, claim, defense,
40 termination, right of termination or remedy under the promis-
41 sory note, health-care-insurance receivable or general intangi-
42 ble.

43 (d) **Limitation on ineffectiveness under subsections (a)**
44 **and (c).** To the extent that a term in a promissory note or in an
45 agreement between an account debtor and a debtor which
46 relates to a health-care-insurance receivable or general intangi-
47 ble or a rule of law, statute or regulation described in subsection
48 (c) of this section would be effective under law other than this
49 article but is ineffective under subsection (a) or (c) of this
50 section, the creation, attachment or perfection of a security
51 interest in the promissory note, health-care-insurance receivable
52 or general intangible:

53 (1) Is not enforceable against the person obligated on the
54 promissory note or the account debtor;

55 (2) Does not impose a duty or obligation on the person
56 obligated on the promissory note or the account debtor;

57 (3) Does not require the person obligated on the promissory
58 note or the account debtor to recognize the security interest, pay
59 or render performance to the secured party, or accept payment
60 or performance from the secured party;

61 (4) Does not entitle the secured party to use or assign the
62 debtor's rights under the promissory note, health-care-insurance
63 receivable or general intangible, including any related informa-
64 tion or materials furnished to the debtor in the transaction

65 giving rise to the promissory note, health-care-insurance
66 receivable or general intangible;

67 (5) Does not entitle the secured party to use, assign, possess
68 or have access to any trade secrets or confidential information
69 of the person obligated on the promissory note or the account
70 debtor; and

71 (6) Does not entitle the secured party to enforce the security
72 interest in the promissory note, health-care-insurance receivable
73 or general intangible.

74 (e) **Section prevails over specified inconsistent law.** This
75 section prevails over any inconsistent provisions of an existing
76 or future statute, rule or regulation of this state unless the
77 provision is contained in a statute of this state, refers expressly
78 to this section and states that the provision prevails over this
79 section.

80 (f) **Inapplicability.** Subsection (c) of this section does not
81 apply to an assignment or transfer of or the creation, attach-
82 ment, perfection, or enforcement of a security interest in, a right
83 the transfer of which is prohibited or restricted by any of the
84 following statutes, to the extent that the statute is inconsistent
85 with said subsection: Chapter twenty-three, article four, section
86 eighteen; chapter forty-six-a, article six-h; and a claim or right
87 to receive benefits under a special needs trust as described in 42
88 U.S.C. §1396(d)(4).

PART 5. FILING.

SUBPART 2. DUTIES AND OPERATION OF FILING OFFICE.

*§46-9-525. Fees.

1 (a) **Initial financing statement or other record: general**
2 **rule.** Except as otherwise provided in subsection (e) of this
3 section, the fee for filing and indexing a record under this part,

***Clerk's Note:** This section was also amended by S. B. 478 (Chapter 265), which passed prior to this act.

4 other than an initial financing statement of the kind described
5 in subsection (b) of this section, is the amount specified in
6 subsection (c) of this section, if applicable, plus:

7 (1) Ten dollars if the record is communicated in writing and
8 consists of one or two pages;

9 (2) Ten dollars if the record is communicated in writing and
10 consists of more than two pages; and

11 (3) Ten dollars if the record is communicated by another
12 medium authorized by filing-office rule.

13 (b) **Initial financing statement: public-finance and**
14 **manufactured housing transactions.** Except as otherwise
15 provided in subsection (e) of this section, the fee for filing and
16 indexing an initial financing statement of the following kind is
17 the amount specified in subsection (c) of this section, if
18 applicable, plus:

19 (1) Ten dollars if the financing statement indicates that it is
20 filed in connection with a public-finance transaction;

21 (2) Ten dollars if the financing statement indicates that it is
22 filed in connection with a manufactured-home transaction.

23 (c) **Number of names.** The number of names required to be
24 indexed does not affect the amount of the fee in subsections (a)
25 and (b) of this section.

26 (d) **Response to information request.** The fee for respond-
27 ing to a request for information from the filing office, including
28 for issuing a certificate showing whether there is on file any
29 financing statement naming a particular debtor, is:

30 (1) Five dollars if the request is communicated in writing;

31 (2) Five dollars if the request is communicated by another
32 medium authorized by filing-office rule; and

33 (3) Fifty cents per page for each active lien.

34 (e) **Record of mortgage.** This section does not require a fee
35 with respect to a record of a mortgage which is effective as a
36 financing statement filed as a fixture filing or as a financing
37 statement covering as-extracted collateral or timber to be cut
38 under section 9-502(c). However, the recording and satisfaction
39 fees that otherwise would be applicable to the record of the
40 mortgage apply.

41 (f) **Deposit of funds.** All fees and moneys collected by the
42 secretary of state pursuant to the provisions of this article shall
43 be deposited by the secretary of state in a separate fund in the
44 state treasury and shall be expended solely for the purposes of
45 this article, unless otherwise provided by appropriation or other
46 action of the Legislature.

PART 7. TRANSITION.

§46-9-705. Effectiveness of action taken before effective date.

1 (a) **Preeffective-date action; two-year perfection period**
2 **unless reperfected.** If action, other than the filing of a financ-
3 ing statement, is taken before this article takes effect and the
4 action would have resulted in priority of a security interest over
5 the rights of a person that becomes a lien creditor had the
6 security interest become enforceable before this article takes
7 effect, the action is effective to perfect a security interest that
8 attaches under this article within two years after this article
9 takes effect. An attached security interest becomes unperfected
10 two years after this article takes effect unless the security
11 interest becomes a perfected security interest under this article
12 before the expiration of that period.

13 **(b) Preeffective-date filing.** The filing of a financing
14 statement before this article takes effect is effective to perfect
15 a security interest to the extent the filing would satisfy the
16 applicable requirements for perfection under this article.

17 **(c) Preeffective-date filing in jurisdiction formerly**
18 **governing perfection.** This article does not render ineffective
19 an effective financing statement that, before this article takes
20 effect, is filed and satisfies the applicable requirements for
21 perfection under the law of the jurisdiction governing perfection
22 as provided in former section 9-103. However, except as
23 otherwise provided in subsections (d) and (e) of this section and
24 section 9-706, the financing statement ceases to be effective at
25 the earlier of:

26 (1) The time the financing statement would have ceased to
27 be effective under the law of the jurisdiction in which it is filed;
28 or

29 (2) The thirtieth day of June, two thousand six.

30 **(d) Continuation statement.** The filing of a continuation
31 statement after this article takes effect does not continue the
32 effectiveness of the financing statement filed before this article
33 takes effect. However, upon the timely filing of a continuation
34 statement after this article takes effect and in accordance with
35 the law of the jurisdiction governing perfection as provided in
36 part 3, the effectiveness of a financing statement filed in the
37 same office in that jurisdiction before this article takes effect
38 continues for the period provided by the law of that jurisdiction.

39 **(e) Application of subsection (c)(2) to transmitting**
40 **utility financing statement.** Subsection (c)(2) of this section
41 applies to a financing statement that, before this article takes
42 effect, is filed against a transmitting utility and satisfies the
43 applicable requirements for perfection under the law of the
44 jurisdiction governing perfection as provided in former section
45 9-103 only to the extent that part 3 provides that the law of a

46 jurisdiction other than the jurisdiction in which the financing
47 statement is filed governs perfection of a security interest in
48 collateral covered by the financing statement.

49 (f) **Application of part 5.** A financing statement that
50 includes a financing statement filed before this article takes
51 effect and a continuation statement filed after this article takes
52 effect is effective only to the extent that it satisfies the require-
53 ments of part 5 for an initial financing statement.

CHAPTER 307

(S. B. 466 — By Senator Snyder)

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred three, article two, chapter thirty-six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the construction and validity of declaration and bylaws of common interest communities; and limitations on changes in restrictive covenants.

Be it enacted by the Legislature of West Virginia:

That section one hundred three, article two, chapter thirty-six-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. CREATION, ALTERATION AND TERMINATION OF COMMON INTEREST COMMUNITIES.

§36B-2-103. Construction and validity of declaration and bylaws.

1 (a) All provisions of the declaration and bylaws are
2 severable.

3 (b) The rule against perpetuities does not apply to defeat
4 any provision of the declaration, bylaws, rules or regulations
5 adopted pursuant to section 3-102(a)(1).

6 (c) In the event of a conflict between the provisions of the
7 declaration and the bylaws, the declaration prevails except to
8 the extent the declaration is inconsistent with this chapter.

9 (d) Title to a unit and common elements is not rendered
10 unmarketable or otherwise affected by reason of an insubstan-
11 tial failure of the declaration to comply with this chapter.
12 Whether a substantial failure impairs marketability is not
13 affected by this chapter.

14 (e) A declaration or the bylaws may not change or alter a
15 restrictive covenant in a deed to any real estate that is or that
16 becomes subject to the provisions of this chapter. The restric-
17 tive covenants that are in effect at the time real estate is
18 purchased that is or that becomes subject to the provisions of
19 this chapter may not be changed or altered as to the purchaser
20 of that real estate or as to any assign, heir or beneficiary of the
21 original purchaser unless that original purchaser, assign, heir or
22 beneficiary agrees in writing to a change of a restrictive
23 covenant. This subdivision does not apply to the change of
24 restrictive covenants of homeowner fees if the fees do not
25 exceed the sum of one hundred dollars a year.

CHAPTER 308

(S. B. 520 — By Senators Wooton and Helmick)

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four hundred one and four hundred seven, article four, chapter thirty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to securities; including viaticals in the definition of a security; authorizing the appointment of special investigators; authorizing certain duties of the commissioner, deputy commissioners and investigators; requiring an oath of the commissioner, deputy commissioner and investigators; requiring the filing of the oaths; making the civil and criminal investigations of the securities commission exempt from requirements of article nine-a, chapter six of said code and chapter twenty-nine-b of said code; and providing that the commissioner, deputy commissioners and investigators of the securities commission not be allowed to carry guns or other firearms.

Be it enacted by the Legislature of West Virginia:

That sections four hundred one and four hundred seven, article four, chapter thirty-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 4. GENERAL PROVISIONS.

§32-4-401. Definitions.

§32-4-407. Sworn investigator, investigations and subpoenas.

§32-4-401. Definitions.

1 When used in this chapter, unless the context otherwise
2 requires:

3 (a) "Commissioner" means the auditor of the state of West
4 Virginia.

5 (b) "Agent" means any individual other than a broker-
6 dealer who represents a broker-dealer or issuer in effecting or
7 attempting to effect purchases or sales of securities. "Agent"

8 does not include an individual who represents an issuer in: (1)
9 Effecting transactions in a security exempted by subdivision
10 (1), (2), (3), (10) or (11), subsection (a), section four hundred
11 two of this article; (2) effecting transactions exempted by
12 subsection (b), section four hundred two of this article; (3)
13 effecting transactions in a covered security as described in
14 section 18(b)(3) and section 18(b)(4)(d) of the Securities Act of
15 1933; (4) effecting transactions with existing employees,
16 partners or directors of the issuer if no commission or other
17 remuneration is paid or given, directly or indirectly, for
18 soliciting any person in this state; or (5) effecting transactions
19 in this state limited to those transactions described in section
20 15(h)(2) of the Securities Exchange Act of 1934. A partner,
21 officer or director of a broker-dealer or issuer, or a person
22 occupying a similar status or performing similar functions, is an
23 agent only if he or she otherwise comes within this definition.

24 (c) "Broker-dealer" means any person engaged in the
25 business of effecting transactions in securities for the account
26 of others or for his or her own account. "Broker-dealer" does
27 not include: (1) An agent; (2) an issuer; (3) a bank, savings
28 institution or trust company; or (4) a person who has no place
29 of business in this state if: (A) He or she effects transactions in
30 this state exclusively with or through: (i) The issuers of the
31 securities involved in the transactions; (ii) other broker-dealers;
32 or (iii) banks, savings institutions, trust companies, insurance
33 companies, investment companies as defined in the Investment
34 Company Act of 1940, pension or profit-sharing trusts or other
35 financial institutions or institutional buyers, whether acting for
36 themselves or as trustees; or (B) during any period of twelve
37 consecutive months he or she does not direct more than fifteen
38 offers to sell or buy into this state in any manner to persons
39 other than those specified in subparagraph (A), paragraph (4) of
40 this subdivision whether or not the offeror or any of the offerees
41 is then present in this state.

42 (d) "Fraud", "deceit" and "defraud" are not limited to
43 common-law deceit.

44 (e) "Guaranteed" means guaranteed as to payment of
45 principal, interest or dividends.

46 (f) "Federal covered adviser" means a person who is: (1)
47 Registered under section 203 of the Investment Advisers Act of
48 1940; or (2) is excluded from the definition of "investment
49 advisor" under section two hundred two-a (11) of the Invest-
50 ment Advisers Act of 1940.

51 (g) "Investment adviser" means any person who, for
52 compensation, engages in the business of advising others, either
53 directly or through publications or writings, as to the value of
54 securities or as to the advisability of investing in, purchasing or
55 selling securities or who, for compensation and as a part of a
56 regular business, issues or promulgates analyses or reports
57 concerning securities. "Investment adviser" also includes
58 financial planners and other persons who, as an integral
59 component of other financially related services, provide the
60 foregoing investment advisory services to others for compensa-
61 tion and as part of a business or who hold themselves out as
62 providing the foregoing investment advisory services to others
63 for compensation. "Investment adviser" does not include: (1) A
64 bank, savings institution or trust company; (2) a lawyer,
65 accountant, engineer or teacher whose performance of those
66 services is solely incidental to the practice of his or her profes-
67 sion; (3) a broker-dealer whose performance of these services
68 is solely incidental to the conduct of his or her business as a
69 broker-dealer and who receives no special compensation for
70 them; (4) a publisher, employee or columnist of a newspaper,
71 news magazine or business or financial publication or an owner,
72 operator, producer or employee of a cable, radio or television
73 network, station or production facility if, in either case, the
74 financial or business news published or disseminated is made

75 available to the general public and the content does not consist
76 of rendering advice on the basis of the specific investment
77 situation of each client; (5) a person whose advice, analyses or
78 reports relate only to securities exempted by subdivision (1),
79 subsection (a), section four hundred two of this article; (6) a
80 person who has no place of business in this state if: (A) His or
81 her only clients in this state are other investment advisers,
82 broker-dealers, banks, savings institutions, trust companies,
83 insurance companies, investment companies as defined in the
84 Investment Company Act of 1940, pension or profit-sharing
85 trusts or other financial institutions or institutional buyers,
86 whether acting for themselves or as trustees; or (B) during any
87 period of twelve consecutive months he or she does not have
88 more than five clients who are residents of this state other than
89 those specified in subparagraph (A), paragraph (6), of this
90 subdivision, whether or not he or she or any of the persons to
91 whom the communications are directed is then present in this
92 state; (7) an investment adviser representative; (8) a “federal
93 covered adviser”; or (9) such other persons not within the intent
94 of this paragraph as the commissioner may by rule or order
95 designate.

96 (h) “Investment adviser representative” means any partner,
97 officer, director of or a person occupying a similar status or
98 performing similar functions or other individual, except clerical
99 or ministerial personnel, who is employed by or associated with
100 an investment adviser that is registered or required to be
101 registered under this chapter or who has a place of business
102 located in this state and is employed by or associated with a
103 federal covered adviser; and including clerical or ministerial
104 personnel, who does any of the following: (1) Makes any
105 recommendations or otherwise renders advice regarding
106 securities; (2) manages accounts or portfolios of clients; (3)
107 determines which recommendation or advice regarding securi-
108 ties should be given; (4) solicits, offers or negotiates for the sale
109 of or sells investment advisory services unless such person is

110 registered as an agent pursuant to this article; or (5) supervises
111 employees who perform any of the foregoing unless such
112 person is registered as an agent pursuant to this article.

113 (i) "Issuer" means any person who issues or proposes to
114 issue any security, except that: (1) With respect to certificates
115 of deposit, voting-trust certificates or collateral-trust certificates
116 or with respect to certificates of interest or shares in an unincor-
117 porated investment trust not having a board of directors or
118 persons performing similar functions or of the fixed, restricted
119 management or unit type, the term "issuer" means the person or
120 persons performing the acts and assuming the duties of deposi-
121 tor or manager pursuant to the provisions of the trust or other
122 agreement or instrument under which the security is issued; and
123 (2) with respect to certificates of interest or participation in oil,
124 gas or mining titles or leases or in payments out of production
125 under such titles or leases, there is not considered to be any
126 "issuer".

127 (j) "Nonissuer" means not, directly or indirectly, for the
128 benefit of the issuer.

129 (k) "Person" means an individual, a corporation, a partner-
130 ship, an association, a joint-stock company, a trust where the
131 interests of the beneficiaries are evidenced by a security, an
132 unincorporated organization, a government or a political
133 subdivision of a government.

134 (l) (1) "Sale" or "sell" includes every contract of sale of,
135 contract to sell, or disposition of a security or interest in a
136 security for value;

137 (2) "Offer" or "offer to sell" includes every attempt or offer
138 to dispose of, or solicitation of an offer to buy, a security or
139 interest in a security for value;

140 (3) Any security given or delivered with, or as a bonus on
141 account of, any purchase of securities or any other thing is
142 considered to constitute part of the subject of the purchase and
143 to have been offered and sold for value;

144 (4) A purported gift of assessable stock is considered to
145 involve an offer and sale;

146 (5) Every sale or offer of a warrant or right to purchase or
147 subscribe to another security of the same or another issuer, as
148 well as every sale or offer of a security which gives the holder
149 a present or future right or privilege to convert into another
150 security of the same or another issuer, is considered to include
151 an offer of the other security;

152 (6) The terms defined in this subdivision do not include:
153 (A) Any bona fide pledge or loan; (B) any stock dividend,
154 whether the corporation distributing the dividend is the issuer
155 of the stock or not, if nothing of value is given by stockholders
156 for the dividend other than the surrender of a right to a cash or
157 property dividend when each stockholder may elect to take the
158 dividend in cash or property or in stock; (C) any act incident to
159 a class vote by stockholders, pursuant to the certificate of
160 incorporation or the applicable corporation statute, on a merger,
161 consolidation, reclassification of securities or sale of corporate
162 assets in consideration of the issuance of securities of another
163 corporation; or (D) any act incident to a judicially approved
164 reorganization in which a security is issued in exchange for one
165 or more outstanding securities, claims or property interests, or
166 partly in such exchange and partly for cash.

167 (m) "Securities Act of 1933", "Securities Exchange Act of
168 1934", "Public Utility Holding Company Act of 1935" and
169 "Investment Company Act of 1940" mean the federal statutes
170 of those names as amended before the effective date of this
171 chapter. The National Securities Markets Improvement Act of

172 1996 (“NSMIA”) means the federal statute which makes certain
173 amendments to the Securities Act of 1933, the Securities
174 Exchange Act of 1934, the Investment Company Act of 1940
175 and the Investment Advisers Act of 1940.

176 (n) “Security” means any note; stock; treasury stock; bond;
177 debenture; evidence of indebtedness; certificate of interest or
178 participation in any profit-sharing agreement; collateral-trust
179 certificate; preorganization certificate or subscription; transfer-
180 able share; investment contract; voting-trust certificate;
181 certificate of deposit for a security; viatical settlement contract;
182 certificate of interest or participation in an oil, gas, or mining
183 title or lease or in payments out of production under such a title
184 or lease; or, in general, any interest or instrument commonly
185 known as a “security” or any certificate of interest or participa-
186 tion in, temporary or interim certificate for, receipt for, guaran-
187 tee of or warrant or right to subscribe to or purchase any of the
188 foregoing. “Security” does not include any insurance or
189 endowment policy or annuity contract under which an insurance
190 company promises to pay money either in a lump sum or
191 periodically for life or some other specified period: *Provided*,
192 That “security” does include insurance or endowment policies
193 or annuity contracts that are viatical settlement contracts or
194 agreements for the purchase, sale, assignment, transfer, devise
195 or bequest of any portion of a death benefit or ownership of a
196 life insurance policy or certificate that is less than the expected
197 death benefit of the life insurance policy or certificate.

198 (o) “Federal covered security” means any security that is a
199 covered security under section 18(b) of the Securities Act of
200 1933, as amended by the National Securities Markets Improve-
201 ment Act of 1996, or rules promulgated thereunder.

202 (p) “State” means any state, territory or possession of the
203 United States, the District of Columbia and Puerto Rico.

§32-4-407. Sworn investigator, investigations and subpoenas.

1 (a) *Sworn Investigators.* –

2 (1) The commissioner may appoint special investigators to
3 aid in investigations conducted pursuant to chapter thirty-two-b
4 of this code.

5 (2) The commissioner, deputy commissioners and each
6 investigator, prior to entering upon the discharge of his or her
7 duties, shall take an oath before any justice of the West Virginia
8 supreme court of appeals, circuit judge or magistrate which is
9 to be in the following form:

10 State of West Virginia

11 County of, to wit: I,, do solemnly
12 swear that I will support the Constitution of the United States,
13 the Constitution of the State of West Virginia, and I will
14 honestly and faithfully perform the duties imposed upon me
15 under the provisions of law as a member of the securities
16 commission of West Virginia to the best of my skill and
17 judgment.

18 (Signed).....

19 Taken, subscribed and sworn to before me, this day of
202001.

21 (3) The oaths of the commissioner, deputy commissioner or
22 commissioners and investigators of the West Virginia securities
23 commission are to be filed and preserved in the office of the
24 state auditor.

25 (b) *Investigations and subpoenas.* –

26 (1) The commissioner in his or her discretion: (A) May
27 make such public or private investigations within or outside of
28 this state as he or she deems necessary to determine whether
29 any person has violated or is about to violate any provision of
30 this chapter or any rule or order hereunder, or to aid in the
31 enforcement of this chapter or in the prescribing of rules and
32 forms hereunder; (B) may require or permit any person to file
33 a statement in writing, under oath or otherwise as the commis-
34 sioner determines, as to all the facts and circumstances concern-
35 ing the matter to be investigated; and (C) may publish informa-
36 tion concerning any violation of this chapter or any rule or
37 order hereunder.

38 (2) For the purpose of any investigation or proceeding
39 under this chapter, the commissioner, deputy commissioner or
40 commissioners, if any, and special investigators appointed
41 pursuant to this section may administer oaths and affirmations,
42 subpoena witnesses, compel attendance of witnesses, take and
43 store evidence in compliance with the policies and procedures
44 of the West Virginia state police and require the production of
45 any books, papers, correspondence, memoranda, agreements or
46 other documents or records which the commissioner finds
47 relevant or material to the inquiry.

48 (3) In case of contumacy by, or refusal to obey a subpoena
49 issued to, any person, the circuit court of Kanawha County,
50 upon application by the commissioner, may issue to the person
51 an order requiring him or her to appear before the commis-
52 sioner, or the officer designated by him or her, to produce
53 documentary evidence if so ordered or to give evidence
54 touching the matter under investigation or in question. Failure
55 to obey the order of the court may be punished by the court as
56 a contempt of court.

57 (4) No person is excused from attending and testifying or
58 from producing any document or record before the commis-
59 sioner, or in obedience to the subpoena of the commissioner or
60 any officer designated by him or her, or in any proceeding

61 instituted by the commissioner on the ground that the testimony
62 or evidence (documentary or otherwise) required of him or her
63 may tend to incriminate him or her or subject him or her to a
64 penalty or forfeiture; but no individual may be prosecuted or
65 subjected to any penalty or forfeiture for or on account of any
66 transaction, matter or thing concerning which he or she is
67 compelled, after claiming his or her privilege against
68 self-incrimination to testify or produce evidence (documentary
69 or otherwise), except that the individual testifying is not exempt
70 from prosecution and punishment for perjury or contempt
71 committed in testifying.

72 (5) Civil and criminal investigations undertaken by the
73 West Virginia securities commission are not subject to the
74 requirements of article nine-a, chapter six of this code and
75 chapter twenty-nine-b of this code.

76 (6) Nothing in this chapter may be construed to authorize
77 the commissioner, a deputy commissioner, a special investiga-
78 tor appointed pursuant to this section or any other employee of
79 the state auditor to carry or use a hand gun or other firearm in
80 the discharge of his or her duties under this article.

81 (7) Nothing in this chapter limits the power of the state to
82 punish any person for any conduct which constitutes a crime.

CHAPTER 309

**(Com. Sub. for H. B. 2804 — By Delegates Staton, Canterbury,
Keener, Craig, Stephens, Fox and Swartzmiller)**

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article five, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections eleven, sixteen, eighteen, eighteen-a and eighteen-b, article seven, chapter twenty of said code; and to further amend said article by adding thereto five new sections, designated sections eighteen-c, eighteen-d, nineteen-a, twenty-a and twenty-two-a, all relating to motorboats and other motorized vessels; providing for certain implied consent regulations to test for alcohol on blood, breath or urine; regulating certain personal watercrafts; restricting the age of operation; requiring certain flotation and safety devices; restricting the hours of use; prohibiting certain reckless activities; setting guidelines for towing certain water skiers and other towables; regulating certain boating and personal watercraft liveries; providing certain exemptions; providing for a duty on certain personal watercrafts and motorized vessels to render aid after a collision; restriction of operation of certain personal watercrafts or other motorized vessels under the influence of alcohol, controlled substances or drugs; and providing certain criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

Chapter

17C. Traffic Regulations and Laws of the Road.

20. Natural Resources.

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.**§17C-5-4. Implied consent to test; administration at direction of law-enforcement officer; designation of type of test; definition of law-enforcement officer.**

1 (a) Any person who drives a motor vehicle in this state is
2 deemed to have given his or her consent by the operation of the
3 motor vehicle to a preliminary breath analysis and a secondary
4 chemical test of either his or her blood, breath or urine for the
5 purposes of determining the alcoholic content of his or her
6 blood.

7 (b) A preliminary breath analysis may be administered in
8 accordance with the provisions of section five of this article
9 whenever a law-enforcement officer has reasonable cause to
10 believe a person has committed an offense prohibited by section
11 two of this article or by an ordinance of a municipality of this
12 state which has the same elements as an offense described in
13 section two of this article.

14 (c) A secondary test of blood, breath or urine is incidental
15 to a lawful arrest and is to be administered at the direction of
16 the arresting law-enforcement officer having reasonable
17 grounds to believe the person has committed an offense
18 prohibited by section two of this article or by an ordinance of
19 a municipality of this state which has the same elements as an
20 offense described in section two of this article.

21 (d) The law-enforcement agency that employs the
22 law-enforcement officer shall designate which type of second-
23 ary test is to be administered: *Provided*, That if the test desig-
24 nated is a blood test and the person arrested refuses to submit
25 to the blood test, then the law-enforcement officer making the
26 arrest shall designate either a breath or urine test to be adminis-
27 tered. Notwithstanding the provisions of section seven of this
28 article, the refusal to submit to a blood test only may not result

29 in the revocation of the arrested person's license to operate a
30 motor vehicle in this state.

31 (e) Any person to whom a preliminary breath test is
32 administered who is then arrested shall be given a written
33 statement advising him or her that his or her refusal to submit
34 to the secondary chemical test pursuant to subsection (d) of this
35 section, will result in the revocation of his or her license to
36 operate a motor vehicle in this state for a period of at least one
37 year and up to life.

38 (f) Any law-enforcement officer who has been properly
39 trained in the administration of any secondary chemical test
40 authorized by this article, including, but not limited to, certifi-
41 cation by the division of health in the operation of any equip-
42 ment required for the collection and analysis of a breath sample,
43 may conduct the test at any location in the county wherein the
44 arrest is made: *Provided*, That the law-enforcement officer may
45 conduct the test at the nearest available properly functioning
46 secondary chemical testing device located outside the county in
47 which the arrest was made, if (i) there is no properly function-
48 ing secondary chemical testing device located within the county
49 the arrest was made or (ii) there is no magistrate available
50 within the county the arrest was made for the arraignment of the
51 person arrested. A law-enforcement officer who is directing that
52 a secondary chemical test be conducted has the authority to
53 transport the person arrested to where the secondary chemical
54 testing device is located.

55 (g) If the arresting officer lacks proper training in the
56 administration of a secondary chemical test, then any other law-
57 enforcement officer who has received training in the adminis-
58 tration of the secondary chemical test to be administered may,
59 upon the request of the arresting law-enforcement officer and
60 in his or her presence, conduct the secondary test. The results
61 of a test conducted pursuant to this subsection may be used in

62 evidence to the same extent and in the same manner as if the
63 test had been conducted by the arresting law-enforcement
64 officer.

65 (h) Only the person actually administering or conducting a
66 test conducted pursuant to this article is competent to testify as
67 to the results and the veracity of the test.

68 (i) For the purpose of this article, the term
69 "law-enforcement officer" or "police officer" means: (1) Any
70 member of the West Virginia state police; (2) any sheriff and
71 any deputy sheriff of any county; (3) any member of a police
72 department in any municipality as defined in section two,
73 article one, chapter eight of this code; (4) any conservation
74 officer of the division of natural resources; and (5) any special
75 police officer appointed by the governor pursuant to the
76 provisions of section forty-one, article three, chapter sixty-one
77 of this code who has completed the course of instruction at a
78 law-enforcement training academy as provided for under the
79 provisions of section nine, article twenty-nine, chapter thirty of
80 this code.

81 (j) A law-enforcement officer who has reasonable cause to
82 believe that person has committed an offense prohibited by
83 section eighteen, article seven, chapter twenty of this code,
84 relating to the operation of a motorboat, jet ski or other motor-
85 ized vessel, shall follow the provisions of this section in
86 administering, or causing to be administered, a preliminary
87 breath analysis and the secondary chemical test of the accused
88 person's blood, breath or urine for the purpose of determining
89 alcohol content of his or her blood.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-11. Motorboats and other terms defined.

§20-7-16. Boat liveries.

§20-7-18. Care in handling watercraft; duty to render aid after a collision, accident or casualty; accident reports.

§20-7-18a. Negligent homicide; penalties.

§20-7-18b. Operating under influence of alcohol, controlled substances or drugs; penalties.

§20-7-18c. Implied consent to test; administration at direction of law-enforcement officer.

§20-7-18d. Operation of personal watercrafts.

§20-7-19a. Towing water skiers and towables.

§20-7-20a. Personal watercraft operation and towing exemptions.

§20-7-22a. Agency rule making for personal watercrafts.

§20-7-11. Motorboats and other terms defined.

1 As used in this section and subsequent sections of this
2 article, unless the context clearly requires a different meaning:

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

6 (2) "Motorboat" means any vessel propelled by an electri-
7 cal, steam, gas, diesel or other fuel propelled or driven motor,
8 whether or not the motor is the principal source of propulsion,
9 but does not include a vessel which has a valid marine docu-
10 ment issued by the bureau of customs of the United States
11 government or any federal agency successor thereto;

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

19 (4) "Commissioner" means the commissioner of the
20 division of motor vehicles;

21 (5) "Director" means the director of the division of natural
22 resources; and

23 (6) "Personal watercraft" means a small vessel of less than
24 sixteen feet in length which uses an inboard motor powering a
25 water jet pump as its primary source of motive power and
26 which is designed to be operated by a person sitting, standing,
27 or kneeling on the vessel, rather than the conventional manner
28 of sitting or standing inside the vessel. For purposes of this
29 article, the term "personal watercraft" also includes "specialty
30 prop-crafts" which are vessels similar in appearance and
31 operation to a personal watercraft but which are powered by an
32 outboard motor or propeller driven motor.

§20-7-16. Boat liveries.

1 (a) The owner or operator of a boat livery or rental facility
2 shall cause to be kept a record of the name and address of the
3 person or persons hiring any vessel including personal water-
4 crafts which is designed or permitted by him or her to be
5 operated as a motorboat, identification number thereof, and the
6 departure date and time, and the expected time of return. The
7 record shall be preserved for at least six months.

8 (b) Neither the owner or operator of a boat livery or rental
9 facility, nor his or her agent or employee, shall permit any
10 motorboat, personal watercraft or any vessel designed or
11 permitted by him or her to be operated as a motorboat or
12 personal watercraft to depart from his or her premises unless it
13 shall have been provided, either by owner or renter, with the
14 equipment required pursuant to section thirteen of this article
15 and any rules made pursuant thereto.

16 (c) The owner or operator of a boat livery or rental facility,
17 or his or her agent or employee, shall provide boating safety
18 orientation for all persons that rent any vessel, including
19 personal watercrafts, unless that person holds a certificate as

20 required by section twelve-b, article seven of this chapter. The
21 owner of a boat livery or rental facility, or his or her agent or
22 employee, shall also provide to the operator or operators in
23 print, prior to rental, the operational characteristics of personal
24 watercrafts.

25 (d) The owner or operator of a boat livery or rental facility,
26 or his or her agent or employee, may not lease, hire or rent a
27 personal watercraft to any person under eighteen years of age.

28 (e) The owner or operator of a boat livery or rental facility,
29 or his or her agent or employee, shall provide to the operator or
30 operators of rental vessels, boats or personal watercrafts, in
31 print, all pertinent boating rules including, but not limited to,
32 those rules that may be peculiar to the area of the rental, such
33 as no-wake zones, restricted areas, channel markers, water
34 hazard markers and swimming zones.

35 (f) The owner or operator of a boat livery or rental facility
36 shall carry liability insurance of at least three hundred thousand
37 dollars and possess the license and surety bond as required by
38 section twenty-three-d, article two of this chapter.

**§20-7-18. Care in handling watercraft; duty to render aid after
a collision, accident or casualty; accident reports.**

1 (a) No person shall operate a motorboat, jet ski or other
2 motorized vessel or manipulate any water skis, surfboard or
3 similar device in a reckless or negligent manner so as to
4 endanger the life, limb or property of any person.

5 (b) No person shall operate any motorboat, jet ski or other
6 motorized vessel, or manipulate any water skis, surfboard or
7 similar device while under the influence of alcohol or a
8 controlled substance or drug, under the combined influence of
9 alcohol and any controlled substance or any other drug, or while

10 having an alcohol concentration in his or her blood of ten
11 hundredths of one percent or more, by weight.

12 (c) It shall be the duty of the operator of a vessel involved
13 in a collision, accident or other casualty, so far as he or she can
14 do so without serious danger to his or her own vessel, crew and
15 passengers (if any), to render to other persons affected by the
16 collision, accident or other casualty such assistance as may be
17 practicable and as may be necessary in order to save them from
18 or minimize any danger caused by the collision, accident or
19 other casualty, and also to give his or her name, address and
20 identification of his or her vessel in writing to any person
21 injured and to the owner of any property damaged in the
22 collision, accident or other casualty.

23 (d) The operator of a vessel involved in a collision, accident
24 or other casualty shall file an accident report with the director
25 if the incident results in a loss of life, in a personal injury that
26 requires medical treatment beyond first aid or in excess of five
27 hundred dollars damage to a vessel or other property. The
28 report shall be made on forms and contain information as
29 prescribed by the director. Upon a request duly made by an
30 authorized official or agency of the United States, any informa-
31 tion compiled or otherwise available to the director pursuant to
32 this subsection shall be transmitted to the official or agency.

§20-7-18a. Negligent homicide; penalties.

1 (a) When the death of any person ensues within one year as
2 a proximate result of injury received by operating any motor-
3 boat, jet ski or other motorized vessel anywhere in this state in
4 reckless disregard of the safety of others, the person so operat-
5 ing the motorboat, jet ski or other motorized vessel is guilty of
6 negligent homicide.

7 (b) Any person convicted of negligent homicide shall be
8 punished by imprisonment in the county or regional jail for not

9 more than one year or by fine of not less than one hundred
10 dollars nor more than one thousand dollars, or by both fine and
11 imprisonment.

12 (c) The director shall suspend the privilege to operate a
13 motorboat or other motorized vessel in this state for a period of
14 five years from the date of conviction.

**§20-7-18b. Operating under influence of alcohol, controlled
substances or drugs; penalties.**

1 (a) Any person who:

2 (1) Operates a motorboat, jet ski or other motorized vessel
3 in this state while:

4 (A) He or she is under the influence of alcohol; or

5 (B) He or she is under the influence of any controlled
6 substance; or

7 (C) He or she is under the influence of any other drug; or

8 (D) He or she is under the combined influence of alcohol
9 and any controlled substance or any other drug; or

10 (E) He or she has an alcohol concentration in his or her
11 blood of ten hundredths of one percent or more, by weight; and

12 (2) When so operating does any act forbidden by law or
13 fails to perform any duty imposed by law in the operating of the
14 motorboat, jet ski or other motorized vessel, which act or
15 failure proximately causes the death of any person within one
16 year next following the act or failure; and

17 (3) Commits the act or failure in reckless disregard of the
18 safety of others, when the influence of alcohol, controlled
19 substances or drugs is shown to be a contributing cause to the

20 death, is guilty of a felony and, upon conviction thereof, shall
21 be imprisoned in the state correctional facility for not less than
22 one nor more than ten years and shall be fined not less than one
23 thousand dollars nor more than three thousand dollars.

24 (b) Any person who:

25 (1) Operates a motorboat, jet ski or other motorized vessel
26 in this state while:

27 (A) He or she is under the influence of alcohol; or

28 (B) He or she is under the influence of any controlled
29 substance; or

30 (C) He or she is under the influence of any other drug; or

31 (D) He or she is under the combined influence of alcohol
32 and any controlled substance or any other drug; or

33 (E) He or she has an alcohol concentration in his or her
34 blood of ten hundredths of one percent or more, by weight; and

35 (2) When so operating does any act forbidden by law or
36 fails to perform any duty imposed by law in the operating of the
37 motorboat, jet ski or other motorized vessel, which act or
38 failure proximately causes the death of any person within one
39 year next following the act or failure, is guilty of a misde-
40 meanor and, upon conviction thereof, shall be confined in the
41 county or regional jail for not less than ninety days nor more
42 than one year and shall be fined not less than five hundred
43 dollars nor more than one thousand dollars.

44 (c) Any person who:

45 (1) Operates a motorboat, jet ski or other motorized vessel
46 in this state while:

- 47 (A) He or she is under the influence of alcohol; or
- 48 (B) He or she is under the influence of any controlled
49 substance; or
- 50 (C) He or she is under the influence of any other drug; or
- 51 (D) He or she is under the combined influence of alcohol
52 and any controlled substance or any other drug; or
- 53 (E) He or she has an alcohol concentration in his or her
54 blood of ten hundredths of one percent or more, by weight; and
- 55 (2) When so operating does any act forbidden by law or
56 fails to perform any duty imposed by law in the operating of the
57 motorboat, jet ski or other motorized vessel, which act or
58 failure proximately causes bodily injury to any person other
59 than himself or herself, is guilty of a misdemeanor and, upon
60 conviction thereof, shall be confined in the county or regional
61 jail for not less than one day nor more than one year, which jail
62 term shall include actual confinement of not less than twenty-
63 four hours, and shall be fined not less than two hundred dollars
64 nor more than one thousand dollars.
- 65 (d) Any person who:
- 66 (1) Operates a motorboat, jet ski or other motorized vessel
67 in this state while:
- 68 (A) He or she is under the influence of alcohol; or
- 69 (B) He or she is under the influence of any controlled
70 substance; or
- 71 (C) He or she is under the influence of any other drug; or
- 72 (D) He or she is under the combined influence of alcohol
73 and any controlled substance or any other drug; or

74 (E) He or she has an alcohol concentration in his or her
75 blood of ten hundredths of one percent or more, by weight;

76 (2) Is guilty of a misdemeanor and, upon conviction
77 thereof, shall be confined in the county or regional jail for not
78 less than one day nor more than six months, which jail term
79 shall include actual confinement of not less than twenty-four
80 hours, and shall be fined not less than one hundred dollars nor
81 more than five hundred dollars.

82 (e) Any person who, being an habitual user of narcotic
83 drugs or amphetamine or any derivative thereof, operates a
84 motorboat, jet ski or other motorized vessel in this state, is
85 guilty of a misdemeanor and, upon conviction thereof, shall be
86 confined in the county or regional jail for not less than one day
87 nor more than six months, which jail term shall include actual
88 confinement of not less than twenty-four hours, and shall be
89 fined not less than one hundred dollars nor more than five
90 hundred dollars.

91 (f) Any person who:

92 (1) Knowingly permits his or her motorboat, jet ski or other
93 motorized vessel to be operated in this state by any other person
94 who is:

95 (A) Under the influence of alcohol; or

96 (B) Under the influence of any controlled substance; or

97 (C) Under the influence of any other drug; or

98 (D) Under the combined influence of alcohol and any
99 controlled substance or any other drug; or

100 (E) Has an alcohol concentration in his or her blood of ten
101 hundredths of one percent or more, by weight;

102 (2) Is guilty of a misdemeanor and, upon conviction
103 thereof, shall be confined in the county or regional jail for not
104 more than six months and shall be fined not less than one
105 hundred dollars nor more than five hundred dollars.

106 (g) Any person who:

107 Knowingly permits his or her motorboat, jet ski or other
108 motorized vessel to be operated in this state by any other person
109 who is an habitual user of narcotic drugs or amphetamine or
110 any derivative thereof, is guilty of a misdemeanor and, upon
111 conviction thereof, shall be confined in the county or regional
112 jail for not more than six months and shall be fined not less than
113 one hundred dollars nor more than five hundred dollars.

114 (h) Any person under the age of twenty-one years who
115 operates a motorboat, jet ski or other motorized vessel in this
116 state while he or she has an alcohol concentration in his or her
117 blood of two hundredths of one percent or more, by weight, but
118 less than ten hundredths of one percent, by weight, shall, for a
119 first offense under this subsection, be guilty of a misdemeanor
120 and, upon conviction thereof, shall be fined not less than
121 twenty-five dollars nor more than one hundred dollars. For a
122 second or subsequent offense under this subsection, the person
123 is guilty of a misdemeanor and, upon conviction thereof, shall
124 be confined in the county or regional jail for twenty-four hours,
125 and shall be fined not less than one hundred dollars nor more
126 than five hundred dollars.

127 A person arrested and charged with an offense under the
128 provisions of subsection (a), (b), (c), (d), (e), (f), (g) or (i) of
129 this section may not also be charged with an offense under this
130 subsection arising out of the same transaction or occurrence.

131 (i) Any person who:

132 (1) Operates a motorboat, jet ski or other motorized vessel
133 in this state while:

134 (A) He or she is under the influence of alcohol; or

135 (B) He or she is under the influence of any controlled
136 substance; or

137 (C) He or she is under the influence of any other drug; or

138 (D) He or she is under the combined influence of alcohol
139 and any controlled substance or any other drug; or

140 (E) He or she has an alcohol concentration in his or her
141 blood of ten hundredths of one percent or more, by weight; and

142 (2) The person when so operating has on or within the
143 motorboat, jet ski or other motorized vessel one or more other
144 persons who are unemancipated minors who have not reached
145 their sixteenth birthday, shall be guilty of a misdemeanor and,
146 upon conviction thereof, shall be confined in the county or
147 regional jail for not less than two days nor more than twelve
148 months, which jail term shall include actual confinement of not
149 less than forty-eight hours, and shall be fined not less than two
150 hundred dollars nor more than one thousand dollars.

151 (j) A person violating any provision of subsection (b), (c),
152 (d), (e), (f), (g) or (i) of this section, for the second offense
153 under this section, is guilty of a misdemeanor and, upon
154 conviction thereof, shall be confined in the county or regional
155 jail for a period of not less than six months nor more than one
156 year, and the court may, in its discretion, impose a fine of not
157 less than one thousand dollars nor more than three thousand
158 dollars.

159 (k) A person violating any provision of subsection (b), (c),
160 (d), (e), (f), (g) or (i) of this section shall, for the third or any

161 subsequent offense under this section, be guilty of a felony and,
162 upon conviction thereof, shall be imprisoned in the state
163 correctional facility for not less than one nor more than three
164 years, and the court may, in its discretion, impose a fine of not
165 less than three thousand dollars nor more than five thousand
166 dollars.

167 (1) For purposes of subsections (j) and (k) of this section
168 relating to second, third and subsequent offenses, the following
169 types of convictions shall be regarded as convictions under this
170 section:

171 (1) Any conviction under the provisions of subsection (a),
172 (b), (c), (d), (e) or (f) of this section for an offense which
173 occurred on or after the effective date of this section;

174 (2) Any conviction under the provisions of subsection (a)
175 or (b) of this section for an offense which occurred within a
176 period of five years immediately preceding the date of the
177 offense; and

178 (3) Any conviction under a municipal ordinance of this
179 state or any other state or a statute of the United States or of any
180 other state of an offense which has the same elements as an
181 offense described in subsection (a), (b), (c), (d), (e), (f) or (g) of
182 this section, which offense occurred after the effective date of
183 this section.

184 (m) A person may be charged in a warrant or indictment or
185 information for a second or subsequent offense under this
186 section if the person has been previously arrested for or charged
187 with a violation of this section which is alleged to have oc-
188 curred within the applicable time periods for prior offenses,
189 notwithstanding the fact that there has not been a final adjudica-
190 tion of the charges for the alleged previous offense. The warrant
191 or indictment or information shall set forth the date, location
192 and particulars of the previous offense or offenses. No person

193 may be convicted of a second or subsequent offense under this
194 section unless the conviction for the previous offense has
195 become final.

196 (n) The fact that any person charged with a violation of
197 subsection (a), (b), (c), (d) or (e) of this section, or any person
198 permitted to operate as described under subsection (f) or (g) of
199 this section, is or has been legally entitled to use alcohol, a
200 controlled substance or a drug shall not constitute a defense
201 against any charge of violating subsection (a), (b), (c), (d), (e),
202 (f) or (g) of this section.

203 (o) For purposes of this section, the term "controlled
204 substance" shall have the meaning ascribed to it in chapter
205 sixty-a of this code.

206 (p) The sentences provided herein upon conviction for a
207 violation of this article are mandatory and may not be subject
208 to suspension or probation: *Provided*, That the court may apply
209 the provisions of article eleven-a, chapter sixty-two of this code
210 to a person sentenced or committed to a term of one year or
211 less. An order for home detention by the court pursuant to the
212 provisions of article eleven-b, chapter sixty-two of this code
213 may be used as an alternative sentence to any period of incar-
214 ceration required by this section.

**§20-7-18c. Implied consent to test; administration at direction of
law-enforcement officer.**

1 Any person who operates a motorboat, jet ski or other
2 motorized vessel in this state shall be deemed to have given his
3 or her consent by the operation thereof, to a preliminary breath
4 analysis and a secondary chemical test of either his or her
5 blood, breath or urine for the purposes of determining the
6 alcoholic content of his or her blood. A preliminary breath test
7 and the secondary chemical test of blood, breath or urine and
8 the results of the tests may be designated, administered,

9 processed, interpreted and used in the same manner as tests
10 designated and administered in accordance with the provisions
11 of article five, chapter seventeen-c of this code.

§20-7-18d. Operation of personal watercrafts.

1 (a) No person under the age of fifteen may operate a
2 personal watercraft on the waters of this state: *Provided*, That
3 a person that has attained the age of twelve may operate a
4 personal watercraft if a person eighteen years or older is aboard
5 the personal watercraft.

6 (b) A person may not operate a personal watercraft unless
7 each person on board or being towed behind is wearing a type
8 I, type II, type III, or type V personal flotation device approved
9 by the United States Coast Guard. Inflatable personal flotation
10 devices do not meet the requirements of this section.

11 (c) A person operating a personal watercraft equipped by
12 the manufacturer with a lanyard-type engine cutoff switch must
13 attach the lanyard to his or her person, clothing, or personal
14 flotation device as appropriate for the specific vessel.

15 (d) A person may not operate a personal watercraft at
16 anytime between the hours of sunset and sunrise. However, an
17 agent or employee of a fire rescue, emergency rescue unit, or
18 law-enforcement division is exempt from this subsection while
19 performing his or her official duties.

20 (e) A personal watercraft must at all times be operated in a
21 reasonable and prudent manner. Maneuvers which unreasonably
22 or unnecessarily endanger life, limb, or property constitute
23 reckless operation of a vessel and include, but are not limited
24 to:

25 (1) Weaving through congested traffic;

26 (2) Jumping the wake of another vessel unreasonably or
27 unnecessarily close to the other vessel or when visibility around
28 the other vessel is obstructed or restricted;

29 (3) Becoming airborne or completely leaving the water
30 while crossing the wake of another vessel within one hundred
31 feet of the vessel creating the wake;

32 (4) Operating at a greater than slow or no-wake speed
33 within one hundred feet of an anchored or moored vessel,
34 shoreline, dock, pier, swim float, marked swim areas, swim-
35 mers, surfers, persons engaged in angling, or any manually
36 powered vessel;

37 (5) Operating contrary to navigation rules including
38 following too closely to another vessel, including another
39 personal watercraft. For the purpose of this subdivision,
40 "following too closely" is construed as a proceeding in the same
41 direction and operating at a speed in excess of ten miles per
42 hour within one hundred feet to the rear or fifty feet to the side
43 of another vessel which is underway, unless said vessels are
44 operating in a narrow channel, in which case the personal
45 watercraft may operate at the speed and flow of the other vessel
46 traffic within the channel.

§20-7-19a. Towing water skiers and towables.

1 (a) No person may operate a personal watercraft towing
2 another person on water skis or other towables unless the
3 personal watercraft has, on board, in addition to the operator, a
4 rear-facing observer, who monitors the progress of the person
5 or persons being towed. This rear-facing observer must be at
6 least twelve years of age.

7 (b) No person may operate a personal watercraft towing
8 another person on water skis or other towables unless the total
9 number of persons operating, observing and being towed does

10 not exceed the specified number of passengers as identified by
11 the manufacturer as the maximum safe load for the vessel.

§20-7-20a. Personal watercraft operation and towing exemptions.

1 (a) The provisions of sections eighteen-d and nineteen-a do
2 not apply to a performer engaged in a professional exhibition or
3 a person engaging in an officially sanctioned regatta, race,
4 marine parade, tournament, exhibition, or water safety demon-
5 stration.

6 (b) The provisions of sections eighteen-d and nineteen-a do
7 not apply to a person who holds a valid master's, mate's, or
8 operator's license issued by the United States Coast Guard
9 while performing his or her official duties.

§20-7-22a. Agency rule making for personal watercrafts.

1 The director of the division of natural resources shall
2 propose rules, including the personal watercraft safety orienta-
3 tion requirements for livery owners and operators, for legisla-
4 tive approval in accordance with the provisions of subdivision
5 thirty, section seven, article one of this chapter and section one,
6 article one, chapter twenty-nine-a of this code which effectuate
7 the contents of sections eleven, sixteen, eighteen-d, nineteen-a
8 and twenty-a of this article.

CHAPTER 310

(Com. Sub. for S. B. 574 — By Senators
Snyder, Rowe and Mitchell)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-two, article eleven, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing certain civil penalties of the water pollution control act; and authorizing rules for the development of administrative resolution as an alternative to civil action.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-22. Civil penalties and injunctive relief; administrative penalties.

1 (a) Any person who violates any provision of any permit
2 issued under or subject to the provisions of this article is subject
3 to a civil penalty not to exceed twenty-five thousand dollars per
4 day of such violation and any person who violates any provi-
5 sion of this article or of any rule or who violates any standard
6 or order promulgated or made and entered under the provisions
7 of this article or article one or three, chapter twenty-two-b of
8 this code is subject to a civil penalty not to exceed twenty-five
9 thousand dollars per day of such violation. Any such civil
10 penalty may be imposed and collected only by a civil action
11 instituted by the director in the circuit court of the county in
12 which the violation occurred or is occurring or of the county in
13 which the waters thereof are polluted as the result of such
14 violation.

15 Upon application by the director, the circuit courts of the
16 state or the judges thereof in vacation may by injunction compel
17 compliance with and enjoin violations of the provisions of this
18 article, the rules of the board or director, effluent limitations,

19 the terms and conditions of any permit granted under the
20 provisions of this article, or any order of the director or board,
21 and the venue of any such actions shall be the county in which
22 the violations or noncompliance exists or is taking place or in
23 any county in which the waters thereof are polluted as the result
24 of such violation or noncompliance. The court or the judge
25 thereof in vacation may issue a temporary or preliminary
26 injunction in any case pending a decision on the merits of any
27 injunction application filed. Any other section of this code to
28 the contrary notwithstanding, the state is not required to furnish
29 bond as a prerequisite to obtaining injunctive relief under this
30 article. An application for an injunction under the provisions of
31 this section may be filed and injunctive relief granted notwith-
32 standing that all of the administrative remedies provided for in
33 this article have not been pursued or invoked against the person
34 or persons against whom such relief is sought and notwithstand-
35 ing that the person or persons against whom such relief is
36 sought have not been prosecuted or convicted under the
37 provisions of this article.

38 The judgment of the circuit court upon any application filed
39 or in any civil action instituted under the provisions of this
40 section is final unless reversed, vacated or modified on appeal
41 to the supreme court of appeals. Any such appeal shall be
42 sought in the manner provided by law for appeals from circuit
43 courts in other civil cases, except that the petition seeking
44 review in any injunctive proceeding must be filed with said
45 supreme court of appeals within ninety days from the date of
46 entry of the judgment of the circuit court.

47 Legal counsel and services for the chief, director or the
48 board in all civil penalty and injunction proceedings in the
49 circuit court and in the supreme court of appeals of this state
50 shall be provided by the attorney general or his or her assistants
51 and by the prosecuting attorneys of the several counties as well,

52 all without additional compensation, or the chief, director or the
53 board, with the written approval of the attorney general, may
54 employ counsel to represent him or her or it in a particular
55 proceeding.

56 (b) In addition to the powers and authority granted to the
57 director by this chapter to enter into consent agreements,
58 settlements and otherwise enforce this chapter, the director shall
59 propose, for legislative promulgation, rules in accordance with
60 the provisions of article three, chapter twenty-nine-a of this
61 code to establish a mechanism for the administrative resolution
62 of violations set forth in this section through consent order or
63 agreement as an alternative to instituting a civil action.

CHAPTER 311

(Com. Sub. for S. B. 594 — By Senator Rowe)

[Passed April 12, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend article five, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eighteen, relating to requiring a preliminary performance review of and a termination date for the workers' compensation appeal board.

Be it enacted by the Legislature of West Virginia:

That article five, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be

amended by adding thereto a new section, designated section eighteen, to read as follows:

ARTICLE 5. REVIEW.

§23-5-18. Workers' compensation appeal board termination.

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the workers' compensation appeal board shall continue to
3 exist until the first day of July, two thousand three, unless
4 sooner terminated, continued or reestablished by act of the
5 Legislature.

CHAPTER 312

(H. B. 3252 — By Delegates Warner, Cann, Michael and Stalnaker)

[Passed April 12, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to repeal section four, chapter thirty-one, acts of the Legislature, regular session, one thousand nine hundred sixty, as last amended and reenacted by chapter two hundred thirteen, acts of the Legislature, regular session, one thousand nine hundred sixty-seven; and to amend and reenact section three, chapter thirty-one, acts of the Legislature, regular session, one thousand nine hundred sixty, as last amended and reenacted by chapter two hundred thirteen, acts of the Legislature, regular session, one thousand nine hundred sixty-seven, all relating to reconstituting the membership of the Benedum Airport Authority.

Be it enacted by the Legislature of West Virginia:

That section four, chapter thirty-one, acts of the Legislature, regular session, one thousand nine hundred sixty, as last amended and reenacted by chapter two hundred thirteen, acts of the Legislature, regular session, one thousand nine hundred sixty-seven, be repealed; and that section three, chapter thirty-one, acts of the Legislature, regular session, one thousand nine hundred sixty, as last amended and reenacted by chapter two hundred thirteen, acts of the Legislature, regular session, one thousand nine hundred sixty-seven, be amended and reenacted, all to read as follows:

BENEDUM AIRPORT AUTHORITY.

§3. Members of authority.

1 (a) The management and control of the “Benedum Airport
2 Authority,” its property, operations, business and affairs, shall
3 be lodged in a board of ten persons who shall be known as the
4 members of the authority and who shall be appointed for a term
5 of three years each, five members by the county commission of
6 Harrison County, and five members by the county commission
7 of Marion County, except that, as to the first board appointed,
8 the term of one member appointed by each county commission
9 shall expire on the first day of March next ensuing, the term of
10 another member appointed by each county commission shall
11 expire on the first day of the following March, and the term of
12 the third original member appointed by each county commis-
13 sion shall expire on the first day of the next following March.
14 All members of the board except the members of the first board
15 shall be appointed for full three-year terms. As a member’s
16 term expires, the county commission which appointed such
17 member shall appoint a member for a full term of three years.
18 A member may be reappointed for such additional term or
19 terms as the county commission appointing him may deem
20 proper. If a member resigns, is removed or for any reason his
21 membership terminates during his term of office, a successor
22 member to fill out the remainder of his term shall be appointed

23 by the county commission which appointed him. Members in
24 office at the expiration of their respective terms shall continue
25 to serve until their successors have been appointed and have
26 qualified. The county commission of the county appointing a
27 member may at any time for good cause, and upon at least five
28 days' notice in writing to such member, remove such member
29 of the board of the authority by an order duly entered of record
30 in the record book of such commission and may appoint a
31 successor member for any member so removed. If any member
32 objects to being so removed, he may, in writing, demand a
33 hearing, and the county commission proposing to remove him
34 shall promptly thereafter, in its own county, hold a public
35 hearing thereon. After such public hearing, the county commis-
36 sion holding the hearing shall determine whether the member
37 shall be removed or shall be permitted to continue in office.

38 (b) On the thirtieth day of June, two thousand one, the
39 terms of each member of the board as constituted under the
40 provisions of subsection (a) of this section shall terminate.
41 Thereafter, the board of the authority shall be constituted
42 pursuant to the provisions of subsection (c) of this section and
43 the provisions of subsection (a) of this section shall be of no
44 effect and superseded in their entirety by the provisions of this
45 subsection and subsection (c) of this section.

46 (c)(1) Beginning the first day of July, two thousand one,
47 and thereafter, and notwithstanding any provision of subsection
48 (a) of this section to the contrary, the management and control
49 of the "Benedum Airport Authority," its property, operations,
50 business and affairs, shall be lodged in a board of eleven
51 persons who shall be known as the members of the authority.
52 The board shall consist of seven appointed members and four
53 ex officio members, all of whom shall be voting members.

54 (2) The appointed members of the authority shall be
55 appointed and serve for terms as follows:

56 (A) One member of the county commission of Marion
57 County, appointed by the county commission of Marion County
58 for a term of one year;

59 (B) One member who shall be a resident of Marion County
60 appointed by the county commission of Marion County for a
61 term of one year;

62 (C) One member of the county commission of Harrison
63 County, appointed by the county commission of Harrison
64 County for a term of one year;

65 (D) One member who shall be a resident of Harrison
66 County appointed by the county commission of Harrison
67 County for a term of one year;

68 (E) One member who shall be a member of and appointed
69 by the West Virginia Council for Community and Economic
70 Development for a term of one year; and

71 (F) Two members whose principal place of employment is
72 in a principal business location situate in Marion or Harrison
73 counties of a business within the airline industry appointed by
74 the board of the Mid-Atlantic Aerospace Complex, each for a
75 term of one year.

76 (3) The terms of the appointed members of the authority
77 shall commence on the first day of July and expire on the
78 thirtieth day of June of the following calendar year. All
79 members of the authority shall be appointed for a full one-year
80 term. As a member's term expires, the entity that appointed the
81 member shall appoint a member for a full term of one year. A
82 member may be reappointed for such additional term or terms
83 as the appointing entity may deem proper. In the event of a
84 vacancy, or if a member resigns, is removed or for any reason
85 his membership terminates during his term of office, a succes-
86 sor member to fill out the remainder of his or her term shall be

87 appointed by the entity that appointed the member. Members in
88 office at the expiration of their respective terms shall continue
89 to serve until their successors have been appointed and have
90 qualified.

91 (4) Each appointed member serves at the will and pleasure
92 of the entity that appointed the member and may be removed at
93 any time, upon notice in writing, by the appointing entity.

94 (5) The ex officio members of the authority shall be as
95 follows:

96 (A) The secretary of the department of transportation or his
97 or her designee;

98 (B) The city manager of the municipality of Bridgeport;

99 (C) The president of Fairmont state college; and

100 (D) The executive director of the Mid-Atlantic Aerospace
101 Complex.

CHAPTER 313

**(H. B. 2591 — By Delegates Tucker, Shelton, Givens,
Ennis, Swartzmiller, DeLong and C. White)**

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to direct the commissioner of highways to allow the increase of gross weight limitations on certain roads in Brooke County.

Be it enacted by the Legislature of West Virginia:

WEIGHT LIMITATIONS ON CERTAIN ROADS IN BROOKE COUNTY.

§1. Authority of the commissioner of the division of highways to increase weight limitations on certain highways within Brooke County of West Virginia.

1 If the commissioner of the division of highways determines
2 that the design, construction and safety of the highways in
3 Brooke County of West Virginia are such that tonnage limits
4 may be increased without undue damage, the commissioner
5 may increase them. The commissioner shall then set new
6 weight limitations applicable to said highways or portions
7 thereof.

8 The commissioner may not establish any weight limitation
9 in excess of or in conflict with any weight limitation prescribed
10 by or pursuant to acts of Congress with respect to the national
11 system of interstate and defense highways.

12 If the commissioner determines that those portions of State
13 Route 2 (WV 2) in Brooke County from its intersection with
14 State Street in Follansbee north to the intersection with Brooke
15 County Route 507 (CR 507) at mile point 16.29, State Route 2
16 southbound (WV 2SB), from Brooke CR 507 to WV 2 north-
17 bound, and additionally US 22, and all connecting ramps from
18 the Ohio state line to a point 1.00 mile east are designed and
19 constructed to allow the gross weight limitation to be increased
20 without undue damage, the commissioner may increase the
21 weight limitations from eighty thousand pounds up to ninety
22 thousand pounds on those sections described above: *Provided,*
23 That any person, organization or corporation exceeding eighty
24 thousand pounds gross weight limitation while using these
25 routes must first obtain a multitrip permit from the commis-
26 sioner before proceeding and shall provide the commissioner

27 with a bond sufficient to cover any potential undue damage
28 which may result from the use: *Provided, however,* That if it is
29 the determination of the commissioner that the routes, as
30 specifically described herein, are in need of repaving, those
31 persons, organizations or corporations shall pay the cost of
32 repaving in amounts as assessed, from time to time, by the
33 commissioner: *Provided further,* That the commissioner also
34 determines that the increased limitation is not barred by an act
35 of the United States Congress and the commissioner has
36 received approval from the United States department of
37 transportation to increase the weight limitation.

CHAPTER 314

(H. B. 2583 — By Delegates Givens and Ennis)

[Passed April 12, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, chapter two hundred eighty-seven, acts of the Legislature, regular session, two thousand, relating to directing the commissioner of highways to allow the increase of gross weight limitations on certain roads in Ohio and Brooke Counties.

Be it enacted by the Legislature of West Virginia:

That section one, chapter two hundred eighty-seven, acts of the Legislature, regular session, two thousand, be amended and reenacted to read as follows:

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.

1 If the commissioner of the division of highways determines
2 that the design, construction and safety of certain highways
3 designated herein in Brooke and Ohio counties of West Virginia
4 are such that tonnage limits may be increased without undue
5 damage, the commissioner may increase them. The commis-
6 sioner shall then set new weight limitations applicable to said
7 highways or portions thereof.

8 The commissioner may not establish any weight limitation
9 in excess of or in conflict with any weight limitation prescribed
10 by or pursuant to acts of Congress with respect to the national
11 system of interstate and defense highways.

12 If the commissioner determines that the portion of U. S.
13 Route 40 from milepost 0.84 to 1.35 in Ohio County to U. S.
14 Route 40 westbound from milepost 0.00 to 0.23 in Ohio County
15 to the southbound lanes of State Route 2 from milepost 0.17 to
16 0.26 in Ohio County and on State Route 2 in Ohio County from
17 milepost 3.27 to 11.61 and State Route 2 in Brooke County
18 from milepost 0.00 to 3.33 are designed and constructed to
19 allow the gross weight limitation to be increased from eighty
20 thousand pounds to ninety thousand pounds without undue
21 damage, the commissioner may increase the weight limitations
22 from eighty thousand pounds up to ninety thousand pounds on
23 those sections of State Route 2 and U. S. Route 40 described
24 above: *Provided*, That any person, organization or corporation
25 exceeding eighty thousand pounds gross weight limitation
26 while using said routes shall first obtain a multi-trip permit
27 from the commissioner before proceeding and shall provide the
28 commissioner with a bond sufficient to cover any potential

29 undue damage which may result from the use: *Provided,*
30 *however,* That if it is the determination of the commissioner
31 that the routes, as specifically described herein, are in need of
32 repaving, those persons, organizations or corporations shall pay
33 the cost of repaving in amounts as assessed, from time to time,
34 by the commissioner: *Provided further,* That the commissioner
35 also determines that the increased limitation is not barred by an
36 act of the United States Congress and the commissioner has
37 received approval from the United States department of
38 transportation to increase the weight limitation.

CHAPTER 315

(S. B. 713 — By Senators Craigo, Sharpe, Jackson, Chafin, Prezioso,
Plymale, Love, Helmick, Bowman, Bailey, Anderson, Edgell,
Unger, McCabe, Boley, Minear and Sprouse)

[Passed April 13, 2001; in effect from passage. Approved by the Governor.]

AN ACT to authorize the county commissions of Ohio, Brooke and
Hancock counties to jointly undertake, by contract, economic
development projects.

Be it enacted by the Legislature of West Virginia:

**JOINT UNDERTAKINGS FOR ECONOMIC DEVELOPMENT PROJECTS
BY OHIO, BROOKE AND HANCOCK COUNTIES.**

**§1. Authority of the county commissions of Ohio, Brooke and
Hancock counties to jointly undertake by contract eco-
nomic development projects and sunset provisions.**

1 (a) Any two or more county commissions of Ohio, Brooke
2 and Hancock counties are authorized to cooperate or contract to
3 share expenses for and revenues derived from joint economic
4 development projects within their geographic territories
5 regardless of the county in which the economic development
6 project is located.

7 (b) A contract shall be authorized by each party thereto with
8 approval of its legislative body.

9 (c) A contract shall set forth the purposes, powers, rights,
10 obligations and responsibilities, financial and otherwise, of the
11 contracting parties. The contract shall also include a plan in
12 which the project will be evaluated for its success and perfor-
13 mance and a mechanism for reporting the progress of the
14 project to the Legislature.

15 (d) Where other provisions of law provide requirements for
16 special types of intergovernmental contracting or cooperation,
17 those special provisions shall control.

18 (e) In the event that a county desires to withdraw from
19 participation, the county may not be entitled to the return of any
20 money or property advanced to the project, unless specifically
21 provided for in the contract.

22 (f) In the event that a joint economic development project
23 is terminated, all funds, property and other assets shall be
24 returned to the county commissions in the same proportion as
25 contributions of funds, property and other assets were made by
26 the county commissions.

27 (g) The authorization of the commissions of Ohio, Brooke
28 and Hancock counties to contract to share expenses for and
29 revenues derived from joint economic development projects, as

30 set forth in this section, shall be subject to termination and
31 sunset three years after the effective date of the authorization
32 and after conduct of a performance audit: *Provided*, That the
33 termination of counties' authorization to enter into these
34 contracts does not cancel or terminate any contract already
35 entered into by the county commissions prior to sunset. The
36 performance audit shall be filed with the president of the Senate
37 and the speaker of the House of Delegates. The performance
38 audit shall contain the following:

39 (1) A summary of the contracts entered and the develop-
40 ment projects established;

41 (2) A summary of the results of the contracts and the
42 development projects, including jobs created and revenues
43 derived;

44 (3) A summary of the cost of the development projects; and

45 (4) Recommendations as to the changes needed to further
46 promote counties to cooperate in obtaining economic develop-
47 ment projects to be located in the state.

CHAPTER 316

(H. B. 3179 — By Delegate Riggs)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to change the name of the “Upshur County Four-H Camp”
to “Upshur County Youth Camp.”

Be it enacted by the Legislature of West Virginia:

§1. Changing the name of the Upshur County Four-H Camp.

1 That, in all respects wherein reference is made in chapter
2 one hundred fifteen of the acts of the Legislature, regular
3 session, one thousand nine hundred forty-three and in chapter
4 one hundred fifty-nine of the acts of the Legislature, regular
5 session, one thousand nine hundred forty-nine, the name
6 “Upshur County Four-H Camp” shall henceforth be the
7 “Upshur County Youth Camp.”

CHAPTER 317

(H. B. 2819 — By Delegates Warner, DeLong and Swartzmiller)

[Passed April 12, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, chapter three hundred thirty-one, acts of the Legislature, regular session, one thousand nine hundred ninety-eight, relating to directing the commissioner of highways to issue a permit to certain users of two highways in the city of Weirton and allowing the increasing of gross weight limitations on certain roads in the city of Weirton, West Virginia.

Be it enacted by the Legislature of West Virginia:

That section one, chapter three hundred thirty-one, acts of the Legislature, regular session, one thousand nine hundred ninety-eight, be amended and reenacted to read as follows:

SIZE, WEIGHT AND LOAD LIMITATIONS ON CERTAIN ROADS IN WEIRTON, WEST VIRGINIA.

§1. Authority of the commissioner of the division of highways to increase weight limitations upon highways within the city of Weirton, West Virginia.

1 If the commissioner of the division of highways determines
2 that the design, construction and safety of the highways within
3 the city of Weirton, West Virginia, are such that tonnage limits
4 may be increased without undue damage, the commissioner
5 may increase them. The commissioner shall then set new
6 weight limitations applicable to said highways or portions
7 thereof.

8 The commissioner may not establish any weight limitation
9 in excess of or in conflict with any weight limitation prescribed
10 by or pursuant to acts of Congress with respect to the national
11 system of interstate and defense highways.

12 If the commissioner determines that the portion of State
13 Route 2 located in the city of Weirton in the counties of
14 Hancock and Brooke, named "Main Street" and that portion of
15 U.S. Route 22 within the city of Weirton in the county of
16 Brooke named "Freedom Way" are designed and constructed to
17 allow the gross weight limitation to be increased up to one
18 hundred twenty thousand pounds without undue damage, the
19 commissioner may increase the weight limitations from eighty
20 thousand pounds up to one hundred twenty thousand pounds on
21 those sections of State Route 2 and U.S. Route 22 described
22 above: *Provided*, That any person, organization or corporation
23 exceeding eighty thousand pounds gross weight limitation
24 while using said routes shall first obtain a permit from the
25 commissioner before proceeding and shall provide the commis-
26 sioner with a bond sufficient to cover any potential undue
27 damage which may result from the use: *Provided, however*,
28 That if it is the determination of the commissioner that said
29 routes, as specifically described herein, are in need of repaving,
30 those persons, organizations or corporations shall pay the cost

31 of repaving in amounts as assessed, from time to time, by the
32 commissioner: *Provided further*, That the commissioner also
33 determines that the increased limitation is not barred by an act
34 of the United States Congress and the commissioner has
35 received approval from the United States department of
36 transportation to increase the weight limitation.

37 The director of the enforcement division of the division of
38 highways shall identify the trucks exceeding eighty thousand
39 pounds gross weight using the said routes and the companies
40 they represent and report this information to the commissioner
41 of the division of highways.

42 The commissioner of the division of highways shall
43 annually review the damages to the said routes and report the
44 damages to: (1) The local legislative delegation, consisting of
45 two delegates from Brooke County and two delegates from
46 Hancock County and the two senators representing the first
47 senatorial district; and (2) the companies identified by the
48 director of the enforcement division.

49 The commissioner shall assess the damages to the compa-
50 nies, identified by the director of the enforcement division,
51 using the said routes. Notification, by the commissioner, of the
52 amount of the assessment to the companies shall be by certified
53 mail. A copy of the notice of the assessment of damages shall
54 also be forwarded to the local legislative delegation.

55 The companies must pay the assessed damages to the
56 division of highways within thirty days of receipt of the notice.
57 If such payments are not made within thirty days, a penalty in
58 the amount of ten per cent per annum of the outstanding
59 assessment shall be imposed quarterly. The division of high-
60 ways shall, to the best of its ability, commence the repair of the
61 damaged routes within six months of the assessment.

CHAPTER 318

(S. B. 728 — By Senator Deem)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to transfer land located in Lubeck District, Wood County, West Virginia, from the state of West Virginia to Wood County commission for the use and benefit of the county commission for the purpose of developing a park.

Be it enacted by the Legislature of West Virginia:

LAND TRANSFER TO WOOD COUNTY COMMISSION.

1 The state of West Virginia is authorized to transfer to the
2 county commission of Wood County, West Virginia, without
3 consideration, all of those two certain lots, tracts or parcels of
4 land, together with the improvements thereon, the privileges
5 thereof and the appurtenances thereunto belonging, situate the
6 district of Lubeck, in Wood County, West Virginia, and being
7 more particularly bounded and described as follows:

8 Beginning at a concrete monument in the southerly right-
9 of-way line of State Route 95 where the same intersects the
10 easterly right-of-way line of the access road to the within
11 described real estate; thence with the southerly right-of-way
12 line of said Route 95 the following four calls and distances: N.
13 74 degrees 47' E. 164 feet to an iron pin; S. 84 degrees 10' E.
14 229 feet to an iron pin; N. 88 degrees 36' E. 161.80 feet to an
15 iron pin; thence N. 45 degrees 26' E. 228 feet, to the intersec-
16 tion of the westerly right-of-way line of Bradley Avenue;
17 thence with the westerly right-of-way line of Bradley Avenue

18 the following two calls and distances: S. 55 degrees 26' E.
19 306.40 feet to an iron pin; S. 56 degrees 32' E. 252.89 feet to a
20 concrete monument in the westerly right-of-way line of said
21 Bradley Avenue; thence leaving Bradley Avenue, S. 26 degrees
22 00' W. 577.70 feet to an iron pin; thence N. 84 degrees 46' W.
23 476.90 feet, passing an iron pin at 446.90 feet, to the centerline
24 of said access road; thence with the centerline of said access
25 road three calls and distances: N. 18 degrees 46' W. 45 feet; N.
26 42 degrees 38' W. 100 feet; N. 46 degrees 58' W. 220.20 feet;
27 thence N. 43 degrees 02' E. 85 feet to a concrete monument in
28 the easterly right-of-way line of said access road; thence with
29 the easterly right-of-way line of said access road N. 40 degrees
30 44' W. 184.11 feet to a concrete monument; and, N. 21 degrees
31 40' W. 216.46 feet to the place of beginning, containing 14.45
32 acres. as shown and described in a survey made by James F.
33 Debrular, dated April 20, 1980, a plat of which survey is duly
34 of record in the office of the Clerk of the County Commission
35 of Wood County, West Virginia in Deed Book 738 at page No.
36 191 therein, to which plat reference is here made for a more
37 particular description of the property to be conveyed herein.
38 There is also included in the property authorized to be conveyed
39 herein, that certain real estate, being a section of land sixty feet
40 in width, running from the 14.45 acre tract above described
41 through and bounded by other lands of the previous grantor of
42 the property authorized to be conveyed herein and returning to
43 the aforementioned 14.45 acre tract, which section of land
44 appears on the above mentioned survey and is identified
45 thereon as "60' right-of-way" to which survey reference is
46 hereby made for a more particular description of said land. Any
47 conveyance of this said section of land shall be made subject to
48 a perpetual and nonexclusive right-of-way and easement over,
49 through and across said section of land for the purposes of
50 ingress, egress and regress to and from other lands of the
51 previous grantor of the property authorized to be conveyed
52 herein, namely: Nemesis Temple, Ancient Arabic Order of the

53 Nobles of the Mystic Shrine, Parkersburg, West Virginia, its
54 grantees, assigns or successors in title and subject to the right
55 to cross over or under said strip of land for the purpose of
56 connecting or extending utilities previously reserved by the
57 aforesaid previous grantor of the property authorized to be
58 conveyed herein.

59 Being the same real property conveyed by deed dated May
60 20, 1980, from S. William Goff, James H. Carr and James W.
61 Deem, Trustees for Nemesis Temple, Ancient Arabic Order of
62 the Nobles of the Mystic Shrine, Parkersburg, West Virginia, to
63 the state of West Virginia, for the use and benefit of the
64 Blennerhassett Historical Park Commission, which deed is of
65 record in the Office of the Clerk of the County Commission of
66 Wood County, West Virginia, in Deed Book 738, at page 189.
67 Reference to said deed and map is here made for all pertinent
68 purposes.

69 The state of West Virginia expressly reserves from this
70 conveyance all artifacts located, found or discovered upon said
71 real estate to be conveyed herein and the County Commission
72 of Wood County, West Virginia agrees, by the acceptance of
73 this conveyance, to deliver any artifacts found or discovered on
74 the property to the Blennerhassett Island Historical State Park
75 Museum.

76 This conveyance is subject to any and all reservations,
77 restrictions, and rights-of-way or easements of record.

78 This conveyance is and shall be made upon the express
79 condition that the property shall be used by the County Com-
80 mission of Wood County, West Virginia to develop and
81 maintain a public park area. If the property is used for any other
82 purpose or is abandoned by the Commission, then the owner-
83 ship of the property shall revert to the state of West Virginia.

LEGISLATURE OF WEST VIRGINIA

ACTS

SECOND EXTRAORDINARY SESSION, 2000

CHAPTER 1

**(H. B. 204 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed September 13, 2000; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated surplus balance in the state fund, general revenue, to the governor's office - civil contingent fund, fund 0105, fiscal year 2001, organization 0100, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

WHEREAS, The governor submitted to the Legislature a statement of the state fund, general revenue, dated September 13, 2000, setting

forth therein the cash balance as of July 1, 2000, and further included the estimate of revenues for the fiscal year 2001, less net appropriation balances forwarded and regular appropriations for the fiscal year 2001; and

WHEREAS, It appears from the governor’s statement 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 one; 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 one, to fund 0105, fiscal year 2001, organization 0100, be supplemented and amended by increasing the total appropriation by four million dollars in the line item as follows:

1	TITLE II - APPROPRIATIONS		
2	Section 1. Appropriations from general revenue.		
3	EXECUTIVE		
4	<i>8-Governor’s Office-</i>		
5	<i>Civil Contingent Fund</i>		
6	(WV Code Chapter 5)		
7	Fund <u>0105</u> FY <u>2001</u> Org <u>0100</u>		
8			General
9		Act-	Revenue
10		ivity	Fund
11	1	Civil Contingent Fund-	
12		Total-Surplus (R)	238 \$ 4,000,000

13 The purpose of this bill is to supplement this account in the
 14 budget act for the fiscal year ending the thirtieth day of June,
 15 two thousand one, by increasing the existing appropriation for
 16 Civil Contingent Fund—Total by four million dollars for
 17 expenditure during the fiscal year two thousand one.



CHAPTER 2

(H. B. 205 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

 [Passed September 13, 2000; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation in the state fund, general revenue, to the Board of Trustees of the University System of West Virginia - University of West Virginia Health Sciences Account, fund 0323, fiscal year 2001, organization 0478, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

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 one, to fund 0323, fiscal year 2001, organization 0478, be supplemented and amended to read as follows:

1 **TITLE II—APPROPRIATIONS.**

2 **Section 1. Appropriations from general revenue.**

3 **DEPARTMENT OF EDUCATION AND THE ARTS**

4 **48—Board of Trustees of the**

5 *University System of West Virginia—*

6 *University of West Virginia*

7 *Health Sciences Account*

8 (WV Code Chapter 18B)

9 Fund 0323 FY 2001 Org 0478

10			Act-	General
11			ivity	Revenue
12	1	WVU—School of Health		
13	2	Sciences—Charleston Division	175	\$ 4,041,728
14	3	Primary Health Education		
15	4	Program Support (R)	177	4,754,611
16	5	Graduate Medical Education	197	1,397,000
17	6	Medical Education	XXX	0
18	7	School of Osteopathic Medicine	172	6,710,904
19	8	Marshall Medical School	173	11,716,104
20	9	Marshall University -		
21	10	Center for Rural Health	198	200,000
22	11	WVU—School of Health Sciences	174	42,198,873
23	12	Vice Chancellor for		
24	13	Health Sciences	473	287,183
25	14	WVU Charleston Division—		
26	15	Poison Control Hot Line (R)	510	501,565
27	16	Rural Health Initiative Site		
28	17	Support Program (R)	853	2,980,000
29	18	School of Osteopathic Medicine—		
30	19	Capital Improvement	204	<u>600,000</u>
31	20	Total		\$ 75,387,968

32 21 Any unexpended balances remaining in the appropriations for
33 22 Primary Health Education Program Support (fund 0323, activity 177),
34 23 Correctional Telemedicine Project (fund 0323, activity 406),
35 24 Capital Outlay and Equipment (fund 0323, activity 542), WVU
36 25 Charleston Division—Poison Control Hot Line (fund 0323, activity
37 26 510) and Rural Health Initiative Site Support Program (fund 0323,
38 27 activity 853) at the close of the fiscal year 2000 are hereby
39 28 reappropriated for expenditure during the fiscal year 2001, with
40 29 the exception of fund 0323, fiscal year 2000, activity 177
41 30 (\$67,008); fund 0323, fiscal year 2000, activity 853 (\$262,727) and
42 31 fund 0323, fiscal year 2000, activity 510 (\$14,630) which shall
43 32 expire on June 30, 2000.

44 33 The amount in the Graduate Medical Education line-item above may
45 34 be transferred to the Department of Health and Human Resources'
46 35 Medical Service Fund (fund 5084) for the purpose of matching
47 36 federal or other funds to be used in support of graduate medical
48 37 education, subject to the approval of the Vice-Chancellor for
49 38 Health Sciences and the Secretary of the Department of Health
50 39 and Human Resources. If approval is denied, the funds may be
51 40 utilized by the respective institutions for expenditure.

52 The purpose of this bill is to supplement this account in the
53 budget act for the fiscal year ending the thirtieth day of June, two
54 thousand one, by amending language with no additional funds
55 being appropriated.

CHAPTER 3

(H. B. 206 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed November 14, 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 one, in the amount of two hundred ten thousand dollars from the secretary of state - ucc account fund, fund 1605, fiscal year 2001, organization 1600, 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 one, to the secretary of state, fund 0155, fiscal year 2001, organization 1600.

WHEREAS, The Legislature finds that the account balance in the secretary of state - ucc account fund, fund 1605, fiscal year 2001, organization 1600, 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 surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand one; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the secretary of state - ucc account fund, fund 1605, fiscal year 2001, organization 1600, be decreased by expiring the amount of two hundred ten thousand 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 one, to the secretary of state, fund 0155, fiscal year 2001, organization 1600, be supplemented and amended by increasing the total appropriation by two hundred ten thousand dollars in the line item as follows:

- 1 **TITLE II - APPROPRIATIONS**
- 2 **Section 1. Appropriations from general revenue.**
- 3 *17-Secretary of State*
- 4 (WV Code Chapters 3, 5, and 59)
- 5 Fund 0155 FY 2001 Org 1600

6			General
7		Act-	Revenue
8		ivity	Fund
9	6	Unclassified - Surplus	097 \$ 210,000

10 The purpose of this bill is to expire the sum of two hundred
 11 ten thousand dollars from the secretary of state - ucc account
 12 fund, fund 1605, fiscal year 2001, organization 1600, and to
 13 supplement the secretary of state, fund 0155, fiscal year 2001,
 14 organization 1600, in the budget act for the fiscal year ending
 15 the thirtieth day of June, two thousand one, by adding two
 16 hundred ten thousand dollars to the existing appropriation for
 17 Unclassified.



CHAPTER 4

**(H. B. 202 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
 [By Request of the Executive]**

[Passed November 14, 2000; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand one, to the bureau of environment - division of environmental protection - mines and minerals operations fund, fund 3324, fiscal year 2001, organization 0313, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

WHEREAS, The governor has established that there now remains an unappropriated balance in the bureau of environment - division of environmental protection - mines and minerals operations fund, fund 3324, fiscal year 2001, organization 0313, available for expenditure

during the fiscal year ending the thirtieth day of June, two thousand one; 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 one, to fund 3324, fiscal year 2001, organization 0313, be supplemented and amended by increasing the total appropriation by three million seven hundred ninety-four thousand two hundred fifty dollars in the line items as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 3. Appropriations from other funds.**

3 **BUREAU OF ENVIRONMENT**

4 *199—Division of Environmental Protection—*

5 *Mines and Minerals Operations Fund*

6 (WV Code Chapter 22)

7 Fund 3324 FY 2001 Org 0313

			Act-	Other
			ivity	Funds
10	1	Personal Services	001	\$ 1,780,000
11	3	Employee Benefits	010	551,800
12	4	Unclassified	099	1,462,450

13 The purpose of this supplementary appropriation bill is to
14 supplement this fund in the budget act for the fiscal year ending
15 the thirtieth day of June, two thousand one, by increasing the
16 existing appropriation for personal services by one million
17 seven hundred eighty thousand dollars, the existing appropria-
18 tion for employee benefits by five hundred fifty-one thousand
19 eight hundred dollars, and the existing appropriation for
20 unclassified by one million four hundred sixty-two thousand
21 four hundred fifty dollars for expenditure during fiscal year two
22 thousand one.

CHAPTER 5

**(H. B. 203 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed September 13, 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 one, to the bureau of environment - division of environmental protection, fund 8708, fiscal year 2001, organization 0313, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

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 one, 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 one, to fund 8708, fiscal year 2001, organization 0313, be supplemented and amended by increasing the total appropriation by nine million eight hundred twenty-one thousand four hundred forty-one dollars in the line item as follows:

1 **TITLE II - APPROPRIATIONS.**

2 **Section 5. Appropriations of federal funds.**

3

BUREAU OF ENVIRONMENT

4

276-Division of Environmental Protection

5

(WV Code Chapter 22)

6

Fund 8708 FY 2001 Org 0313

7

Act- Federal

8

ivity Funds

9

1 Unclassified-Total 096 \$ 9,821,441

10

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 one, by increasing the existing appropriation for unclassified-total by nine million eight hundred twenty-one thousand four hundred forty-one dollars for expenditure during fiscal year two thousand one.



CHAPTER 6

**(H. B. 207 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**



[Passed November 14, 2000; in effect from passage. Approved by the Governor.]



AN ACT to amend and reenact section two, article one-a, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section eight, article one, chapter thirty of said code, relating generally to the designation of certain legislative rules as procedural rules; authorizing the regional jail authority and division of corrections

to promulgate procedural rules for inmate grievances; and authorizing licensing boards to promulgate procedural rules for complaint procedures and contested case hearings by licensing boards.

Be it enacted by the Legislature of West Virginia:

That section two, article one-a, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section eight, article one, chapter thirty of said code be amended and reenacted, to read as follows:

Chapter

25. Division of Corrections.

30. Professions and Occupations.

CHAPTER 25. DIVISION OF CORRECTIONS.

ARTICLE 1A. WEST VIRGINIA PRISONER LITIGATION REFORM ACT.

§25-1A-2. Mandatory exhaustion of administrative remedies.

1 (a) An inmate may not bring a civil action until the admin-
2 istrative remedies promulgated by the facility have been
3 exhausted: *Provided*, That the remedies promulgated by the
4 facility will be deemed completed within sixty days from the
5 date the inmate filed his or her initial complaint if the inmate
6 fully complied with the requirements for filing and appealing
7 the administrative complaint.

8 (b) The commissioner of the division of corrections and the
9 executive director of the regional jail authority are authorized
10 to establish administrative procedures for processing inmate
11 complaints concerning food quality, health care, nonviolent or
12 nonsexual conduct of employees or contractors of the division
13 of corrections or regional jail authority, loss of privileges and
14 other general complaints about daily living conditions which do

15 not directly and seriously concern an inmate's physical health
16 or security. The proposed joint legislative rule required by the
17 prior enactment of this subsection shall be withdrawn. The
18 commissioner and the executive director shall, by the thirty-first
19 day of January, two thousand one, each file a procedural rule in
20 accordance with the provisions of article three, chapter twenty-
21 nine-a of this code to meet the requirements of this subsection.
22 The public comment period conducted for the proposed
23 legislative rule shall serve as the public comment period
24 required by section five, article three, chapter twenty-nine-a of
25 this code.

26 (c) Notwithstanding any other provision of this code, no
27 inmate shall be prevented from filing an appeal of his or her
28 conviction or bringing a civil or criminal action alleging past,
29 current or imminent physical or sexual abuse; if such a civil or
30 criminal action is ultimately dismissed by a judge as frivolous,
31 then the inmate shall pay the filing costs associated with the
32 civil or criminal action as provided for in this article.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

§30-1-8. Denial, suspension or revocation of a license or registra- tion; probation; proceedings; effect of suspension or revocation; transcript; report; judicial review.

1 (a) Every board referred to in this chapter may suspend or
2 revoke the license of any person who has been convicted of a
3 felony or who has been found to have engaged in conduct,
4 practices or acts constituting professional negligence or a
5 willful departure from accepted standards of professional
6 conduct. Where any person has been convicted of a felony or
7 has been found to have engaged in such conduct, practices or

8 acts, every board referred to in this chapter may enter into
9 consent decrees, to reprimand, to enter into probation orders, to
10 levy fines not to exceed one thousand dollars per day per
11 violation, or any of these, singly or in combination. Each board
12 may also assess administrative costs. Any costs which are
13 assessed shall be placed in the special account of the board, and
14 any fine which is levied shall be deposited in the state trea-
15 sury's general revenue fund. For purposes of this section, the
16 word "felony" means a felony or crime punishable as a felony
17 under the laws of this state, any other state, or the United States.
18 Every board referred to in this chapter may promulgate rules in
19 accordance with the provisions of chapter twenty-nine-a of this
20 code to delineate conduct, practices or acts which, in the
21 judgment of the board, constitute professional negligence, a
22 willful departure from accepted standards of professional
23 conduct or which may render an individual unqualified or unfit
24 for licensure, registration or other authorization to practice.

25 (b) Notwithstanding any other provision of law to the
26 contrary, no certificate, license, registration or authority issued
27 under the provisions of this chapter may be suspended or
28 revoked without a prior hearing before the board or court which
29 issued the certificate, license, registration or authority. How-
30 ever, this requirement does not apply in cases where a board is
31 authorized to suspend or revoke a certificate, license, registra-
32 tion or authority prior to a hearing if the person's continuation
33 in practice constitutes an immediate danger to the public.

34 (c) In all proceedings before a board or court for the
35 suspension or revocation of any certificate, license, registration
36 or authority issued under the provisions of this chapter, a
37 statement of the charges against the holder of the certificate,
38 license, registration or authority and a notice of the time and
39 place of hearing shall be served upon the person as a notice is
40 served under section one, article two, chapter fifty-six of this
41 code, at least thirty days prior to the hearing, and he or she may

42 appear with witnesses and be heard in person, by counsel, or
43 both. The board may take oral or written proof, for or against
44 the accused, as it may consider advisable. If upon hearing the
45 board finds that the charges are true, it may suspend or revoke
46 the certificate, license, registration or authority, and suspension
47 or revocation shall take from the person all rights and privileges
48 acquired thereby.

49 (d) Pursuant to the provisions of section one, article five,
50 chapter twenty-nine-a of this code, informal disposition may
51 also be made by the board of any contested case by stipulation,
52 agreed settlement, consent order or default. Further, the board
53 may suspend its decision and place a licensee found by the
54 board to be in violation of the applicable practice on probation.

55 (e) Any person denied a license, certificate, registration or
56 authority who believes the denial was in violation of this article
57 or the article under which the license, certificate, registration or
58 authority is authorized shall be entitled to a hearing on the
59 action denying the license, certificate, registration or authority.
60 Hearings under this subsection is in accordance with the
61 provisions for hearings which are set forth in this section.

62 (f) A stenographic report of each proceeding on the denial,
63 suspension or revocation of a certificate, license, registration or
64 authority shall be made at the expense of the board and a
65 transcript of the hearing retained in its files. The board shall
66 make a written report of its findings, which shall constitute part
67 of the record.

68 (g) All proceedings under the provisions of this section are
69 subject to review by the supreme court of appeals.

70 (h) On or before the first day of July, two thousand one,
71 every board referred to in this chapter shall adopt procedural
72 rules in accordance with the provisions of article three, chapter

73 twenty-nine-a of this code, which shall specify a procedure for
74 the investigation and resolution of all complaints against
75 persons licensed under this chapter. The proposed legislative
76 rules relating only to complaint procedures or contested case
77 hearing procedures required by the prior enactment of this
78 subsection shall be redesignated as procedural rules in accor-
79 dance with the provisions of article three, chapter twenty-nine-a
80 of this code. Each board shall file the procedural rules required
81 by this subsection by the thirty-first day of January, two
82 thousand one. The public hearing or public comment period
83 conducted for the proposed legislative rules shall serve as the
84 public hearing or public comment period required by section
85 five, article three, chapter twenty-nine-a of this code.

CHAPTER 7

**(H. B. 201 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed November 14, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend section two, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section two-f, all relating generally to the business and occupation tax; deleting certain expired provisions and obsolete language; imposing a business and occupation tax on the privilege of manufacturing or producing synthetic fuel products from coal; providing for rate and measure of tax; defining terms; providing for credits to not reduce tax; authorizing promulgation of emergency rule; dedicating net proceeds of

tax collected; setting forth expiration date for tax and specifying effective date of tax.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-2. Imposition of privilege tax.

§11-13-2f. Manufacturing or producing synthetic fuel from coal.

§11-13-2. Imposition of privilege tax.

1 (a) *Imposition of tax.* – There is hereby levied and shall be
2 collected annual privilege taxes against the persons, on account
3 of their business and other activities, and in the amount to be
4 determined by the application of rates against the measures of
5 tax as set forth in sections two-d, two-e, two-f, two-m, two-n
6 and two-o of this article.

7 (b) If any person liable for any tax under section two-m
8 shall ship or transport his products or any part thereof out of the
9 state without making sale of such products, the value of the
10 products in the condition or form in which they exist immedi-
11 ately before transportation out of the state shall be the basis for
12 the assessment of the tax imposed in the applicable section,
13 except in those instances in which another measure of the tax is
14 expressly provided. The tax commissioner shall prescribe
15 equitable and uniform rules for ascertaining the value.

16 (c) In determining value, however, as regards sales from
17 one to another of affiliated companies or persons, or under
18 other circumstances where the relation between the buyer and

19 seller is such that the gross proceeds from the sale are not
20 indicative of the true value of the subject matter of the sale, the
21 tax commissioner shall prescribe uniform and equitable rules
22 for determining the value upon which the applicable privilege
23 tax shall be levied, corresponding as nearly as possible to the
24 gross proceeds from the sale of similar products of like quality
25 or character where no common interest exists between the
26 buyer and seller but the circumstances and conditions are
27 otherwise similar.

§11-13-2f. Manufacturing or producing synthetic fuel from coal.

1 (a) *Rate and measure of tax.* — Upon every person engaging
2 or continuing within this state in the business of manufacturing
3 or producing synthetic fuel from coal for sale, profit, or
4 commercial use, either directly or through the activity of others
5 in whole or in part, the amount of the tax shall be equal to fifty
6 cents per ton of synthetic fuel manufactured or produced for
7 sale, profit or commercial use. When a fraction of a ton is
8 included in the measure of tax, the rate of tax as to that fraction
9 of a ton shall be proportional. The measure of tax is the total
10 number of tons of synthetic fuel product manufactured or
11 produced in this state for sale, profit or commercial use,
12 regardless of the place of sale or the fact that deliveries may be
13 made to points outside this state. Liability for payment of this
14 tax shall accrue when the synthetic fuel product is sold by the
15 manufacturer or producer, determined by when the producer or
16 manufacturer recognizes gross receipts for federal income tax
17 purposes. When there is no sale of the synthetic fuel product,
18 liability for tax shall accrue when the synthetic fuel product is
19 shipped from the manufacturing facility for commercial use,
20 whether by the taxpayer or by a related party, except as
21 otherwise provided in legislative rules promulgated by the tax
22 commissioner as provided in article three, chapter twenty-nine-
23 a of this code.

LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST EXTRAORDINARY SESSION, 2001

CHAPTER 1

**(H. B. 101 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed April 23, 2001; in effect from passage. Approved by the Governor.]

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

Be it enacted by the Legislature of West Virginia:

Title

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

TITLE I—GENERAL PROVISIONS.

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

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

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

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

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

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

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

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

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

19 “From collections” shall mean that part of the total appro-
20 priation which must be collected by the spending unit to be
21 available for expenditure. If the authorized amount of collec-
22 tions is not collected, the total appropriation for the spending
23 unit shall be reduced automatically by the amount of the
24 deficiency in the collections. If the amount collected exceeds

25 the amount designated “from collections,” the excess shall be
26 set aside in a special surplus fund and may be expended for the
27 purpose of the spending unit as provided by article two, chapter
28 five-a of the code.

1 **Sec. 3. Classification of appropriations.**—An appropria-
2 tion for:

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

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

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

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

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

31 “BRIM Premiums” shall mean the amount charged as
32 consideration for insurance protection and includes the present
33 value of projected losses and administrative expenses. Premi-
34 ums are assessed for coverages, as defined in the applicable
35 policies, for claims arising from, inter alia, general liability,
36 wrongful acts, property, professional liability and automobile
37 exposures.

38 Should the appropriation for “BRIM Premiums” be
39 insufficient to cover such cost, the remainder of such costs shall
40 be transferred by each spending unit from its “personal
41 services” line item, its “employee benefit” line item, its
42 “unclassified” line item or any other appropriate line item to
43 “BRIM Premiums” for payment to the Board of Risk and
44 Insurance Management. Each spending unit is hereby autho-
45 rized and required to make such payments.

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

50 “Current expenses” shall mean operating costs other than
51 personal services and shall not include equipment, repairs and
52 alterations, buildings or lands.

53 Each spending unit shall be responsible for and charged
54 monthly for all postage meter service and shall reimburse the
55 appropriate revolving fund monthly for all such amounts. Such
56 expenditures shall be considered a current expense.

57 “Equipment” shall mean equipment items which have an
58 appreciable and calculable period of usefulness in excess of one
59 year.

60 “Repairs and alterations” shall mean routine maintenance
61 and repairs to structures and minor improvements to property
62 which do not increase the capital assets.

63 “Buildings” shall include new construction and major
64 alteration of existing structures and the improvement of lands
65 and shall include shelter, support, storage, protection or the
66 improvement of a natural condition.

67 “Lands” shall mean the purchase of real property or interest
68 in real property.

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

73 From appropriations made to the spending units of state
74 government, upon approval of the governor there may be
75 transferred to a special account an amount sufficient to match
76 federal funds under any federal act.

77 Appropriations classified in any of the above categories
78 shall be expended only for the purposes as defined above and
79 only for the spending units herein designated: *Provided*, That
80 the secretary of each department shall have the authority to
81 transfer within the department those general revenue funds
82 appropriated to the various agencies of the department: *Pro-*
83 *vided, however*, That no more than five percent of the general
84 revenue funds appropriated to any one agency or board may be
85 transferred to other agencies or boards within the department:
86 *Provided further*, That the secretary of each department and the
87 director, commissioner, executive secretary, superintendent,
88 chairman or any other agency head not governed by a depart-
89 mental secretary as established by chapter five-f of the code
90 shall have the authority to transfer funds appropriated to
91 “personal services” and “employee benefits” to other lines

92 within the same account and no funds from other lines shall be
93 transferred to the “personal services” line: *And provided*
94 *further*, That if the Legislature by subsequent enactment
95 consolidates agencies, boards or functions, the secretary may
96 transfer the funds formerly appropriated to such agency, board
97 or function in order to implement such consolidation. No funds
98 may be transferred from a special revenue account, dedicated
99 account, capital expenditure account or any other account or
100 fund specifically exempted by the Legislature from transfer,
101 except that the use of the appropriations from the state road
102 fund for the office of the secretary of the department of
103 transportation is not a use other than the purpose for which such
104 funds were dedicated and is permitted.

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

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

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

TITLE II—APPROPRIATIONS.

§1. Appropriations from general revenue.

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Committee for the Purchase of Commodities and Services from the Handicapped—Fund No. 0233	2888
Consolidated Public Retirement Board—Fund No. 0195	2884
Education and State Employees Grievance Board—Fund No. 0220	2887
Ethics Commission—Fund No. 0223	2887
Finance, Division of—Fund No. 0203	2884
General Services, Division of—Fund No. 0230	2885
Information Services and Communications, Division of—Fund No. 0583	2885
Prosecuting Attorneys’ Institute, West Virginia— Fund No. 0557	2889
Public Defender Services—Fund No. 0226	2888
Public Employees Insurance Agency—Fund No. 0200	2889
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State Department of Education—Fund No. 0313	2891
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Board of Trustees of the University System of West Virginia Control Account—Fund No. 0327	2899
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Administration—Funding Priorities—Fund	
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LEGISLATIVE

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§5. Appropriations from state excess lottery revenue fund.

APPROPRIATION

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State Park Improvement Fund—Fund No. 3277	2999
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§6. Appropriations of federal funds.

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COMMERCE, BUREAU OF

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Geological and Economic Survey—Fund No. 8704	3008
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Natural Resources, Division of—Fund No. 8707	3009

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ENVIRONMENTAL PROTECTION, DEPARTMENT OF

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EXECUTIVE

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Governor's Office—Governor's Cabinet on Children and Families—Fund No. 8792	3000
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HEALTH AND HUMAN RESOURCES, DEPARTMENT OF

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Health, Division of—Central Office—Fund	
No. 8802	3005
Health, Division of—West Virginia Safe	
Drinking Water Treatment—Fund No. 8824	3005
Human Services, Division of—Fund No. 8722	3006
Human Rights Commission—Fund No. 8725	3005

LEGISLATIVE

Crime Victims Compensation Fund—Fund	
No. 8738	3000

MILITARY AFFAIRS AND PUBLIC SAFETY, DEPARTMENT OF

Adjutant General—State Militia—Fund	
No. 8726	3006
Corrections, Division of—Fund No. 8836	3006
Criminal Justice Services, Division of—	
Fund No. 8803	3007
Emergency Services, Office of—Fund No. 8727	3006
State Police, West Virginia—Fund No. 8741	3006
Veterans Affairs, Division of—Veterans	
Home—Fund No. 8728	3007

MISCELLANEOUS BOARDS AND COMMISSIONS

Public Service Commission—Gas Pipeline	
Division—Fund No. 8744	3011
Public Service Commission—Motor Carrier	
Division—Fund No. 8743	3011

SENIOR SERVICES, BUREAU OF

Senior Services, Bureau of—Fund No. 8724	3010
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TAX AND REVENUE, DEPARTMENT OF

Tax Division—Fund No. 7069	3007
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TRANSPORTATION, DEPARTMENT OF

Aeronautics Commission—Fund No. 8831	3008
Motor Vehicles, Division of—Fund No. 8787	3008
Public Port Authority—Fund No. 8830	3008
Public Transit, Division of—Fund No. 8745	3007

§7. Appropriations from federal block grants.

Criminal Justice Services, Division of—Juvenile	
Accountability Incentive—Fund No. 8829	3014
Criminal Justice Services, Division of—Local	
Law Enforcement—Fund No. 8833	3014
Development Office, West Virginia—Community	
Development—Fund No. 8746	3012
Education, State Department of—Education	
Grant—Fund No. 8748	3012
Employment Programs, Bureau of—Job Training	
Partnership Act—Fund No. 8749	3012
Employment Programs, Bureau of—Workforce Investment	
Act Fund—Fund No. 8842	3012
Governor’s Office—Office of Economic	
Opportunity—Fund No. 8799	3011
Health, Division of—Abstinence Education	
Program—Fund No. 8825	3013
Health, Division of—Community Mental Health	
Services—Fund No. 8794	3013
Health, Division of—Maternal and Child	
Health—Fund No. 8750	3012
Health, Division of—Preventive Health—	
Fund No. 8753	3013
Health, Division of—Substance Abuse Prevention	
and Treatment—Fund No. 8793	3013
Human Services, Division of—Child Care and	
Development—Fund No. 8817	3014
Human Services, Division of—Energy	
Assistance—Fund No. 8755	3013
Human Services, Division of—Social Services—	
Fund No. 8757	3014
Human Services, Division of—Temporary Assistance	
Needy Families—Fund No. 8816	3014

§8. Awards for claims against the state.

§9. Appropriations from surplus accrued.

§10. Special revenue appropriations.

§11. State improvement fund appropriations.

§12. Specific funds and collection accounts.

§13. Appropriations for refunding erroneous payment.

§14. Sinking fund deficiencies.

§15. Appropriations for local governments.

§16. Total appropriations.

§17. General school fund.

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

LEGISLATIVE

1—Senate

Fund 0165 FY 2002 Org 2100

	Activity	General Revenue Fund
1 Compensation of Members (R)	003	\$ 816,200
2 Compensation and Per Diem of Officers 3 and Employees (R)	005	3,003,210
4 Employee Benefits (R)	010	597,712
5 Current Expenses and 6 Contingent Fund (R)	021	700,000
7 Repairs and Alterations (R)	064	450,000
8 Computer Supplies (R)	101	40,000
9 Computer Systems (R)	102	250,000
10 Printing Blue Book (R)	103	150,000
11 Expenses of Members (R)	399	445,000
12 BRIM Premium (R)	913	<u>17,398</u>
13 Total		\$ 6,469,520

14 The appropriations for the senate for the fiscal year 2001
 15 are to remain in full force and effect and are hereby
 16 reappropriated to June 30, 2002. Any balances so
 17 reappropriated may be transferred and credited to the fiscal year
 18 2002 accounts.

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

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

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

49 For duties imposed by law and by the senate, the clerk of
50 the senate shall be paid a monthly salary as provided by the
51 senate resolution, unless increased between sessions under the

52 authority of the president, payable out of the appropriation for
 53 Compensation and Per Diem of Officers and Employees or
 54 Current Expenses and Contingent Fund of the senate.

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

2—House of Delegates

Fund 0170 FY 2002 Org 2200

1	Compensation of Members (R)	003	\$ 2,200,000
2	Compensation and Per Diem of Officers		
3	and Employees (R)	005	521,162
4	Current Expenses and		
5	Contingent Fund (R)	021	3,700,000
6	Expenses of Members (R)	399	1,120,000
7	BRIM Premium (R)	913	<u>17,571</u>
8	Total		\$ 7,558,733

9 The appropriations for the house of delegates for the fiscal
 10 year 2001 are to remain in full force and effect and are hereby
 11 reappropriated to June 30, 2002. Any balances so
 12 reappropriated may be transferred and credited to the fiscal year
 13 2002 accounts.

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

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

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

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

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

3—Joint Expenses

(WV Code Chapter 4)

Fund 0175 FY 2002 Org 2300

1	Joint Committee on		
2	Government and Finance (R)	104	\$ 6,204,725
3	Legislative Printing (R)	105	940,000
4	Legislative Rule-Making		
5	Review Committee (R)	106	226,050
6	Legislative Computer System (R)	107	1,138,121
7	Joint Standing Committee on		
8	Education (R)	108	68,000
9	Tax Reduction and Federal Funding Increased		
10	Compliance (TRAFFIC) (R)	642	0
11	BRIM Premium (R)	913	<u>12,927</u>
12	Total		\$ 8,589,823

13 The appropriations for the joint expenses for the fiscal year
14 2001 are to remain in full force and effect and are hereby
15 reappropriated to June 30, 2002, except Court of Claims
16 (activity 319). Any balances so reappropriated may be trans-
17 ferred and credited to the fiscal year 2002 accounts.

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

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

JUDICIAL

*General Judicial*Fund 0180 FY 2002 Org 2400

1	Personal Services (R)	001	\$ 38,399,018
2	Annual Increment (R)	004	500,000
3	Social Security Matching (R)	011	2,937,501
4	Public Employees' Insurance		
5	Matching (R)	012	4,454,384
6	Public Employees' Retirement		
7	Matching (R)	016	3,052,156
8	Other Expenses (R)	029	7,513,268
9	Judges' Retirement System (R)	110	6,000,000
10	Other Court Costs (R)	111	3,100,000
11	Judicial Training Program (R)	112	623,000
12	Mental Hygiene Fund (R)	113	990,000
13	Guardian Ad Litem (R)	265	250,000
14	Guardianship Attorney Fees (R)	588	175,000
15	Family Court Fund (R)	912	4,859,900
16	BRIM Premium (R)	913	<u>208,998</u>
17	Total		\$ 73,063,225

18 The appropriations to the supreme court of appeals for the
19 fiscal years 2000 and 2001 are to remain in full force and effect
20 and are hereby reappropriated to June 30, 2002. Any balances
21 so reappropriated may be transferred and credited to the fiscal
22 year 2002 accounts.

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

28 The appropriation for the Judges' Retirement System is to
29 be transferred to the consolidated public retirement board, in

30 accordance with the law relating thereto, upon requisition of the
 31 administrative director of the supreme court of appeals.

EXECUTIVE

5—Governor's Office

(WV Code Chapter 5)

Fund 0101 FY 2002 Org 0100

1	Personal Services	001	\$ 2,267,955
2	Salary of Governor	002	90,000
3	Annual Increment	004	17,250
4	Employee Benefits	010	717,992
5	Unclassified (R)	099	1,435,000
6	National Governors' Association	123	71,600
7	Southern States Energy Board	124	28,732
8	WV Human Resource		
9	Investment Council	294	263,769
10	Southern Growth Policies Board	299	24,339
11	Southern Technology Council	308	15,000
12	Southern Governors' Association	314	5,740
13	National Governors' Association for State		
14	Budget Officers	315	12,700
15	BRIM Premium	913	134,901
16	Office of Fiscal and Risk Management	361	<u>350,000</u>
17	Total		\$ 5,434,978

18 Any unexpended balances remaining in the appropriation
 19 for Publication of Papers and Transition Expenses (fund 0101,
 20 activity 465) and Unclassified (fund 0101, activity 099) at the
 21 close of the fiscal year 2001 are hereby reappropriated for
 22 expenditure during the fiscal year 2002.

6—*Governor’s Office*—

Custodial Fund

(WV Code Chapter 5)

Fund 0102 FY 2002 Org 0100

1	Unclassified—Total	096	\$	539,218
2	To be used for current general expenses, including compen-			
3	sation of employees, household maintenance, cost of official			
4	functions and additional household expenses occasioned by			
5	such official functions.			

7—*Governor’s Office*—

Governor’s Cabinet on Children and Families

(WV Code Chapter 5)

Fund 0104 FY 2002 Org 0100

1	Unclassified (R)	099	\$	310,956
2	Family Resource Networks (R)	274		1,505,000
3	Starting Points Centers and Parent Education			
4	Services (R)	316		1,244,500
5	Educare (R)	895		650,000
6	Family Violence Coordinating Council .	362		<u>29,000</u>
7	Total		\$	3,739,456

8 Any unexpended balances remaining in the appropriations
9 for Unclassified (fund 0104, activity 099), Starting Points
10 Centers and Parent Education Services (fund 0104, activity
11 316), Family Resource Networks (fund 0104, activity 274) and
12 Educare (fund 0104, activity 895) at the close of the fiscal year
13 2001 are hereby reappropriated for expenditure during the fiscal
14 year 2002.

8—*Governor’s Office—*

Civil Contingent Fund

(WV Code Chapter 5)

Fund 0105 FY 2002 Org 0100

1 Civil Contingent Fund—Total (R) 114 \$ 4,000,000

2 Any unexpended balances remaining in the appropriations
3 for Civil Contingent Fund—Total (fund 0105, activity 114),
4 Civil Contingent Fund—Surplus (fund 0105, activity 263),
5 Unclassified—Surplus—Total (fund 0105, activity 098) and
6 Civil Contingent Fund—Total—Surplus (fund 0105, activity
7 238) at the close of the fiscal year 2001 are hereby
8 reappropriated for expenditure during the fiscal year 2002.

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

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

9—*Auditor’s Office—*

General Administration

(WV Code Chapter 12)

Fund 0116 FY 2002 Org 1200

1 Personal Services 001 \$ 2,092,944

Ch. 1]	APPROPRIATIONS	2877
2	Salary of Auditor	002 70,000
3	Annual Increment	004 50,523
4	Employee Benefits	010 740,257
5	Unclassified (R)	099 711,624
6	Office Automation (R)	117 790,000
7	Social Security Repayment	256 312,759
8	BRIM Premium	913 1,876
9	Purchasing Card Program	711 <u>41,000</u>
10	Total	\$ 4,810,983

11 Any unexpended balances remaining in the appropriations
12 for Unclassified (fund 0116, activity 099), Office Automation
13 (fund 0116, activity 117) and Payroll System Acquisition (fund
14 0116, activity 594) at the close of the fiscal year 2001 are
15 hereby reappropriated for expenditure during the fiscal year
16 2002 with the exception of fund 0116, fiscal year 2001, activity
17 099 (\$116,704) which shall expire on June 30, 2001.

10—Auditor’s Office—

Family Law Masters—

Administration Fund

(WV Code Chapter 48A)

Fund 0117 FY 2002 Org 1200

1	Unclassified—Total	096 \$ 630,500
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2 The above appropriation shall be expended for the adminis-
3 trative expenses of the family law masters program, excluding
4 personal services and employee benefits.

11—Treasurer’s Office

(WV Code Chapter 12)

Fund 0126 FY 2002 Org 1300

1	Personal Services	001	\$ 1,971,072
2	Salary of Treasurer	002	70,000
3	Annual Increment	004	34,856
4	Employee Benefits	010	577,186
5	Unclassified (R)	099	1,539,562
6	Abandoned Property Program	118	290,389
7	Tuition Trust Fund (R)	692	156,974
8	School Building Sinking		
9	Fund Debt Service (R)	770	4,458,000
10	BRIM Premium	913	<u>12,335</u>
11	Total		\$ 9,110,374

12 Any unexpended balances remaining in the appropriations
 13 for Unclassified (fund 0126, activity 099), School Building
 14 Sinking Fund Debt Service (fund 0126, activity 770) and
 15 Tuition Trust Fund (fund 0126, activity 692) at the close of the
 16 fiscal year 2001 are hereby reappropriated for expenditure
 17 during the fiscal year 2002 with the exception of fund 0126,
 18 fiscal year 2001, activity 770 (\$281,297) which shall expire on
 19 June 30, 2001.

12—Department of Agriculture

(WV Code Chapter 19)

Fund 0131 FY 2002 Org 1400

1	Personal Services	001	\$ 3,561,810
2	Salary of Commissioner	002	70,000
3	Annual Increment	004	73,000
4	Employee Benefits	010	1,239,093
5	State Farm Museum	055	110,000
6	Unclassified (R)	099	1,095,861
7	Gypsy Moth Program (R).	119	920,462
8	Huntington Farmers Market	128	50,000

Fund 0132 FY 2002 Org 1400

1	Personal Services	001	\$	447,895
2	Annual Increment	004		7,900
3	Employee Benefits	010		167,593
4	Unclassified (R)	099		354,455
5	Soil Conservation Projects (R)	120		3,305,147
6	Maintenance of Flood			
7	Control Projects (R)	522		<u>1,791,606</u>
8	Total		\$	6,074,596

9 Any unexpended balances remaining in the appropriations
10 for Unclassified (fund 0132, activity 099), Maintenance of
11 Flood Control Projects (fund 0132, activity 522), Soil Conser-
12 vation Projects (fund 0132, activity 120), Conservation Reserve
13 Enhancement Program (fund 0132, activity 141), and Soil
14 Conservation Projects—Surplus (fund 0132, activity 269) at the
15 close of the fiscal year 2001 are hereby reappropriated for
16 expenditure during the fiscal year 2002 with the exception of
17 fund 0132, fiscal year 2001, activity 120 (\$194,853) which shall
18 expire on June 30, 2001.

*14—Department of Agriculture—**Meat Inspection*

(WV Code Chapter 19)

Fund 0135 FY 2002 Org 1400

1	Personal Services	001	\$	384,287
2	Annual Increment	004		8,403
3	Employee Benefits	010		146,740
4	Unclassified	099		<u>64,503</u>
5	Total		\$	603,933

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

15—Department of Agriculture—

Agricultural Awards

(WV Code Chapter 19)

Fund 0136 FY 2002 Org 1400

1	Fairs and Festivals	122	\$	425,000
2	Commissioner’s Awards and Programs .	737		<u>87,300</u>
3	Total		\$	512,300

16—Attorney General

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

Fund 0150 FY 2002 Org 1500

1	Personal Services (R)	001	\$	2,318,787
2	Salary of Attorney General	002		75,000
3	Annual Increment (R)	004		39,100
4	Employee Benefits (R)	010		677,353
5	Unclassified (R)	099		491,679
6	Better Government Bureau (R)	740		259,738
7	BRIM Premium (R)	913		75,267
8	Computer Upgrades (R)	349		<u>100,000</u>
9	Total		\$	4,036,924

10 Any unexpended balance remaining in the above appropria-
11 tion at the close of the fiscal year 2001 is hereby reappropriated
12 for expenditure during the fiscal year 2002 with the exception
13 of fund 0150, fiscal year 2001, activity 001 (\$75,000), fund
14 0150, fiscal year 2001, activity 010 (\$11,806), and fund 0150,

15 fiscal year 2001, activity 099 (30,000) which shall expire on
 16 June 30, 2001.

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

17—Secretary of State

(WV Code Chapters 3, 5 and 59)

Fund 0155 FY 2002 Org 1600

1	Personal Services	001	\$	618,461
2	Salary of Secretary of State	002		65,000
3	Annual Increment	004		12,500
4	Employee Benefits	010		231,550
5	Unclassified (R)	099		321,225
6	Administrative Law Division			
7	Improvements (R)	880		57,591
8	BRIM Premium	913		<u>21,875</u>
9	Total		\$	1,328,202

10 Any unexpended balances remaining in the appropriations
 11 for Unclassified (fund 0155, activity 099), Technology Im-
 12 provements (fund 0155, activity 599), Administrative Law
 13 Division Improvements (fund 0155, activity 880), and Unclas-
 14 sified-Surplus (fund 0155, activity 097) at the close of the

15 fiscal year 2001 are hereby reappropriated for expenditure
 16 during the fiscal year 2002 with the exception of fund 0155,
 17 fiscal year 2001, activity 099 (\$31,103) and fund 0155, fiscal
 18 year 2001, activity 880 (\$1,764) which shall expire on June 30,
 19 2001.

18—State Election Commission

(WV Code Chapter 3)

Fund 0160 FY 2002 Org 1601

1	Unclassified—Total	096	\$	11,640
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DEPARTMENT OF ADMINISTRATION

19—Department of Administration—

Office of the Secretary

(WV Code Chapter 5F)

Fund 0186 FY 2002 Org 0201

1	Unclassified	099	\$	296,896
2	Pay Equity Reserve	364		200,000
3	BRIM Premium	913		<u>7,524</u>
4	Total		\$	504,420

5 The appropriation for Pay Equity Reserve shall be allocated
 6 by the Secretary of Administration in accordance with a
 7 collaborative methodology that will be developed and estab-
 8 lished by state agencies, the division of personnel, and the equal
 9 pay commission.

20—Consolidated Public Retirement Board

(WV Code Chapter 5)

Fund 0195 FY 2002 Org 0205

1	Retirement Shortfall	266	\$	0
2	Supplemental Benefits for Annuitants . .	892		<u>3,700,000</u>
3	Total		\$	3,700,000

4 The above appropriations may be transferred to the appro-
5 priate special revenue fund of the Consolidated Public Retire-
6 ment Board for expenditure as determined by the Executive
7 Secretary.

8 The division of highways, division of motor vehicles,
9 bureau of employment programs, public service commission
10 and other departments, bureaus or divisions operating from
11 special revenue funds and/or federal funds shall pay their
12 proportionate share of the retirement costs for their respective
13 divisions. When specific appropriations are not made, such
14 payments may be made from the balances in the various special
15 revenue funds in excess of specific appropriations.

21—Division of Finance

(WV Code Chapter 5A)

Fund 0203 FY 2002 Org 0209

1	Personal Services	001	\$	527,460
2	Annual Increment	004		11,090
3	Employee Benefits	010		139,527
4	Unclassified	099		546,103
5	GAAP Project (R)	125		1,197,617
6	BRIM Premium	913		<u>52,889</u>
7	Total		\$	2,474,686

8 Any unexpended balance remaining in the appropriation for
9 GAAP Project (fund 0203, activity 125) at the close of the
10 fiscal year 2001 is hereby reappropriated for expenditure during

11 the fiscal year 2002, with the exception of fund 0203, fiscal
12 year 2001, activity 125 (\$110,914) which shall expire on June
13 30, 2001.

22—Division of Information Services and Communications

(WV Code Chapter 5A)

Fund 0583 FY 2002 Org 0210

1 Past Due Telephone Account 262 \$ 1,000,000

23—Division of General Services

(WV Code Chapter 5A)

Fund 0230 FY 2002 Org 0211

1	Personal Services	001	\$	547,043
2	Annual Increment	004		20,300
3	Employee Benefits	010		222,180
4	Unclassified	099		862,693
5	Fire Service Fee	126		13,440
6	Capitol Complex -			
7	Capital Outlay (R)	417		<u>0</u>
8	Total		\$	1,665,656

9 Any unexpended balances remaining in the appropriations
10 for Capitol Building Preservation (fund 0230, activity 503),
11 Capitol Building Preservation—Surplus (fund 0230, activity
12 675), Capital Improvements—Capitol Complex—Surplus (fund
13 0230, activity 676), Capitol Complex—Capital Outlay (fund
14 0230, activity 417), Capitol Complex Master
15 Plan—Total—Surplus (fund 0230, activity 606) and Capitol
16 Building Roof—Total—Surplus (fund 0230, activity 820) at the
17 close of the fiscal year 2001 are hereby reappropriated for
18 expenditure during the fiscal year 2002.

24—Division of Purchasing

(WV Code Chapter 5A)

Fund 0210 FY 2002 Org 0213

1	Personal Services	001	\$	668,058
2	Annual Increment	004		16,435
3	Employee Benefits	010		195,930
4	Unclassified	099		114,711
5	Purchasing Card Program	711		0
6	BRIM Premium	913		<u>2,394</u>
7	Total		\$	997,528

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

25—Commission on Uniform State Laws

(WV Code Chapter 29)

Fund 0214 FY 2002 Org 0217

1	Unclassified—Total	096	\$	30,250
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2 To pay expenses for members of the commission on
 3 uniform state laws.

26—Board of Risk and Insurance Management

(WV Code Chapter 29)

Fund 0217 FY 2002 Org 0218

1	Personal Services	001	\$	693,056
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Ch. 1]	APPROPRIATIONS	2887
2	Annual Increment	004 5,700
3	Employee Benefits	010 180,747
4	Unclassified	099 40,379
5	RetroPayments	523 2,000,000
6	Premium Enhancement (R)	346 <u>150,000</u>
7	Total	\$ 3,069,882

8 Any unexpended balance remaining in the appropriation for
9 Premium Enhancement (fund 0217, activity 346) at the close of
10 the fiscal year 2001 is hereby reappropriated for expenditure
11 during the fiscal year 2002.

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

27—Education and State Employees' Grievance Board

(WV Code Chapter 18)

Fund 0220 FY 2002 Org 0219

1	Personal Services	001 \$ 659,761
2	Annual Increment	004 8,200
3	Employee Benefits	010 192,185
4	Unclassified	099 169,161
5	BRIM Premium	913 <u>1,376</u>
6	Total	\$ 1,030,683

28—Ethics Commission

(WV Code Chapter 6B)

Fund 0223 FY 2002 Org 0220

1	Personal Services	001 \$ 226,599
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APPROPRIATIONS

[Ch. 1

2	Annual Increment	004		2,008
3	Employee Benefits	010		58,310
4	Unclassified	099		78,652
5	BRIM Premium	913		<u>1,262</u>
6	Total		\$	366,831

29—Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2002 Org 0221

1	Personal Services	001	\$	524,094
2	Annual Increment	004		7,550
3	Employee Benefits	010		186,509
4	Unclassified (R)	099		396,078
5	Appointed Counsel Fees and Public Defender			
6	Corporations (R)	127		23,585,497
7	BRIM Premium	913		<u>30,930</u>
8	Total		\$	24,730,658

9 Any unexpended balances remaining in the above appropri-
 10 ations for Unclassified (fund 0226, activity 099) and Appointed
 11 Counsel Fees and Public Defender Corporations (fund 0226,
 12 activity 127) at the close of the fiscal year 2001 are hereby
 13 reappropriated for expenditure during the fiscal year 2002, with
 14 the exception of fund 0226, fiscal year 2000, activity 127
 15 (\$764,514) which shall expire on June 30, 2001.

*30—Committee for the Purchase of
Commodities and Services from the Handicapped*

(WV Code Chapter 5A)

Fund 0233 FY 2002 Org 0224

1	Unclassified—Total	096	\$	4,516
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31—Public Employees Insurance Agency

(WV Code Chapter 5)

Fund 0200 FY 2002 Org 0225

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

32—West Virginia Prosecuting Attorneys' Institute

Fund 0557 FY 2002 Org 0228

1	Forensic Medical Examinations (R) . . .	683	\$	194,336
2	Federal Funds/Grant Match (R)	749		<u>130,697</u>
3	Total		\$	325,033

4 Any unexpended balances remaining in the appropriations
 5 for Forensic Medical Examinations (fund 0557, activity 683)
 6 and Federal Funds/Grant Match (fund 0557, activity 749) at the
 7 close of the fiscal year 2001 are hereby reappropriated for
 8 expenditure during the fiscal year 2002, with the exception of
 9 fund 0557, fiscal year 2001, activity 683 (\$10,020) which shall
 10 expire on June 30, 2001.

33—Children's Health Insurance Agency

(WV Code Chapter 5)

Fund 0588 FY 2002 Org 0230

1	Unclassified—Total (R)	096	\$	3,440,085
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2 Any unexpended balance remaining in the appropriation for
 3 Unclassified - Total (fund 0588, activity 096) at the close of the
 4 fiscal year 2001 is hereby reappropriated for expenditure during
 5 the fiscal year 2002, with the exception of fund 0557, fiscal
 6 year 2001, activity 096 (\$60,003) which shall expire on June
 7 30, 2001.

DEPARTMENT OF EDUCATION

34—State Department of Education—

School Lunch Program

(WV Code Chapters 18 and 18A)

Fund 0303 FY 2002 Org 0402

1	Personal Services	001	\$	197,953
2	Annual Increment	004		2,760
3	Employee Benefits	010		80,364
4	Unclassified	099		<u>1,764,763</u>
5	Total		\$	2,045,840

35—State FFA-FHA Camp and Conference Center

(WV Code Chapters 18 and 18A)

Fund 0306 FY 2002 Org 0402

1	Personal Services	001	\$	531,058
2	Annual Increment	004		9,150
3	Employee Benefits	010		184,455
4	Unclassified	099		223,161
5	BRIM Premium	913		<u>22,580</u>
6	Total		\$	970,404

36—State Department of Education

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2002 Org 0402

1	Personal Services	001	\$ 2,724,336
2	Annual Increment	004	31,718
3	Employee Benefits	010	996,496
4	Unclassified	099	4,450,000
5	WV Education Information System		
6	(WVEIS)	138	3,863,282
7	34/1000 Waiver	139	300,000
8	Increased Enrollment (R)	140	1,724,488
9	National Science Foundation Match . . .	142	139,500
10	Safe Schools	143	0
11	Teacher Mentor	158	990,000
12	National Teacher Certification	161	350,000
13	Partnership Development/Staff	171	259,810
14	Virtual School on Internet	178	92,294
15	Allowance for County Transfers	264	230,060
16	Implementation of Norm Referenced Testing		
17	Program	297	0
18	Curriculum Technology		
19	Resource Center	300	256,579
20	Character Education Initiative	345	0
21	State-Wide Hotline	347	250,000
22	Tax Assessment Errors	353	39,561
23	HVAC Technicians	355	392,848
24	READS Program	365	0
25	MATH Program	368	0
26	End of Course Exams	369	0
27	Employment Programs Rate Relief	401	0
28	Three Tier Funding	411	0
29	Governor's Honors Academy	478	190,000
30	Micro Computer Network	506	150,000

2892	APPROPRIATIONS	[Ch. 1
31	Adult Advisory Council	621 289,025
32	Foreign Student Education (R)	636 180,456
33	State Teacher of the Year	640 36,661
34	Principals Mentorship	649 75,000
35	Educational Enhancements	695 0
36	Allowance for Work Based Learning . .	744 120,000
37	Pickens School Support	758 150,000
38	Marshall University Graduate	
39	College Writing Project	807 25,000
40	Webster County Board of Education/	
41	Hacker Valley	809 100,000
42	BRIM Premium	913 134,284
43	Early Retirement Notification Incentive	366 200,000
44	WV Literacy Council	370 15,000
45	Tax Loss—Brooke County	371 104,356
46	FBI Checks	372 50,000
47	Principals' Leadership Training	373 485,460
48	State Science Fair	374 <u>25,000</u>
49	Total	\$ 19,421,214

50 The above appropriation includes the state board of
51 education and their executive office.

52 Any unexpended balances remaining in the appropriations
53 for National Teacher Certification (fund 0313, activity 161),
54 Foreign Student Education (fund 0313, activity 636) and
55 Increased Enrollment (fund 0313, activity 140) at the close of
56 the fiscal year 2001 are hereby reappropriated for expenditure
57 during the fiscal year 2002.

37—State Department of Education—

Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Fund 0314 FY 2002 Org 0402

1	Special Education—Counties	159	\$ 7,336,561
2	Special Education—Institutions	160	3,232,618
3	Educational Programs at Beckley Center	192	362,417
4	Education of Juveniles Held in Predispositional		
5	Juvenile Detention Centers	302	575,644
6	Education of Institutionalized Juveniles		
7	and Adults	472	6,536,596
8	Potomac Center	810	<u>512,805</u>
9	Total		\$ 18,556,641

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

38—State Department of Education—

State Aid to Schools

(WV Code Chapters 18 and 18A)

Fund 0317 FY 2002 Org 0402

1	Other Current Expenses	022	\$ 119,611,103
2	Professional Educators	151	725,403,886
3	Service Personnel	152	238,473,581
4	Fixed Charges	153	86,941,748
5	Transportation	154	35,993,918
6	Administration	155	7,724,350
7	Improve Instructional Programs	156	<u>33,000,000</u>
8	Basic Foundation Allowances		1,247,148,586
9	Less Local Share		<u>(277,375,497)</u>
10	Total Basic State Aid		969,773,089
11	Public Employees' Insurance Match .	012	144,286,514
12	Teachers' Retirement System	019	247,374,252
13	School Building Authority	453	<u>23,345,905</u>
14	Total		\$ 1,384,779,760

39—*State Board of Education*—

Vocational Division

(WV Code Chapters 18 and 18A)

Fund 0390 FY 2002 Org 0402

1	Personal Services	001	\$	897,672
2	Annual Increment	004		13,548
3	Employee Benefits	010		300,283
4	Unclassified	099		1,100,915
5	Wood Products—			
6	Forestry Vocational Program	146		63,024
7	Albert Yanni Vocational Program	147		139,300
8	Vocational Aid	148		13,653,842
9	Adult Basic Education	149		3,076,481
10	Equipment Replacement	150		0
11	Program Modernization	305		700,000
12	Aquaculture Support	769		<u>208,441</u>
13	Total		\$	20,153,506

40—*State Board of Education*—

Division of Educational Performance Audits

(WV Code Chapters 18 and 18A)

Fund 0573 FY 2002 Org 0402

1	Personal Services	001	\$	482,843
2	Annual Increment	004		3,600
3	Employee Benefits	010		143,248
4	Unclassified	099		<u>279,849</u>
5	Total		\$	909,540

41—West Virginia Schools for the Deaf and the Blind

(WV Code Chapters 18 and 18A)

Fund 0320 FY 2002 Org 0403

1	Personal Services	001	\$ 6,347,281
2	Annual Increment	004	4,000
3	Employee Benefits	010	2,428,002
4	Unclassified	099	1,533,656
5	BRIM Premium	913	<u>42,812</u>
6	Total		\$ 10,355,751

7 Any unexpended balance remaining in the appropriation for
8 Capital Outlay, Repairs and Equipment—Surplus (fund 0320,
9 activity 677) at the close of the fiscal year 2001 is hereby
10 reappropriated for expenditure during the fiscal year 2002.

DEPARTMENT OF EDUCATION AND THE ARTS

42—Department of Education and the Arts—

Office of the Secretary

(WV Code Chapter 5F)

Fund 0294 FY 2002 Org 0431

1	Unclassified (R)	099	\$ 698,892
2	Center for Professional		
3	Development (R)	115	1,756,437
4	Commission for National and		
5	Community Service	193	0
6	Operation Safe Schools/Hotline Grants	194	0
7	Center for Professional Development—		
8	Principals' Academy (R)	415	0
9	Technical Preparation Program (R)	440	0
10	Community Schools/Mini Grants (R) . .	530	0

11	Hospitality Training	600	533,500
12	BRIM Premium	913	<u>1,515</u>
13	Total		\$ 2,990,344

14 Any unexpended balances remaining in the appropriations
 15 for Unclassified (fund 0294, activity 099), Center for Profes-
 16 sional Development (fund 0294, activity 115), Center for
 17 Professional Development—Principals' Academy (fund 0294,
 18 activity 415), Technical Preparation Program (fund 0294,
 19 activity 440) and Community Schools/Mini Grants (fund 0294,
 20 activity 530) at the close of the fiscal year 2001 are hereby
 21 reappropriated for expenditure during the fiscal year 2002, with
 22 the exception of fund 0294, fiscal year 2001 activity 115
 23 (\$54,254); fund 0294, fiscal year 2001, activity 415 (\$15,000);
 24 fund 0294, fiscal year 2001, activity 440 (\$27,972); fund 0294,
 25 fiscal year 2001, activity 530 (\$39,539); fund 0294, fiscal year
 26 2001, activity 194 (\$9,000) which shall expire on June 30,
 27 2001.

43—Division of Culture and History

(WV Code Chapter 29)

Fund 0293 FY 2002 Org 0432

1	Personal Services	001	\$ 2,141,322
2	Annual Increment	004	33,900
3	Employee Benefits	010	743,441
4	Martin Luther King, Jr.		
5	Holiday Celebration	031	0
6	Unclassified	099	487,309
7	Cultural Center Rent	267	0
8	Veteran's Memorial - Washington, DC .	268	0
9	Grants for Competitive Arts Programs .	624	0
10	Culture and History Programming	732	300,014
11	BRIM Premium	913	<u>27,937</u>
12	Total		\$ 3,733,923

13 Any unexpended balance remaining in the appropriation for
 14 Capital Outlay, Repairs and Equipment (fund 0293, activity
 15 589) at the close of the fiscal year 2001 is hereby
 16 reappropriated for expenditure during the fiscal year 2002.

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

23 All federal moneys received as reimbursement to the
 24 division of culture and history for moneys expended from the
 25 general revenue fund for the arts fund and historical preserva-
 26 tion are hereby reappropriated for the purposes as originally
 27 made, including personal services, current expenses and
 28 equipment.

44—Library Commission

(WV Code Chapter 10)

Fund 0296 FY 2002 Org 0433

1	Personal Services	001	\$ 1,140,479
2	Annual Increment	004	33,300
3	Employee Benefits	010	396,726
4	Unclassified	099	279,997
5	Books and Films	179	0
6	Services to State Institutions	180	0
7	Services to Blind and Handicapped	181	42,729
8	Cultural Center Rent	267	0
9	Libraries—Special Projects	625	0
10	BRIM Premium	913	<u>17,126</u>
11	Total		\$ 1,910,357

45—Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 0300 FY 2002 Org 0439

1	Personal Services	001	\$ 3,336,259
2	Annual Increment	004	59,200
3	Employee Benefits	010	1,087,674
4	Unclassified	099	1,139,117
5	BRIM Premium	913	<u>32,547</u>
6	Total		\$ 5,654,797

7 Any unexpended balance remaining in the appropriation for
8 Equipment—Surplus (fund 0300, activity 341) at the close of
9 the fiscal year 2001 is hereby reappropriated for expenditure
10 during the fiscal year 2002.

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

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

(WV Code Chapters 18B and 18C)

Fund 0333 FY 2002 Org 0452

1 Any unexpended balances remaining in the appropriations
2 for Tuition Contract Program (fund 0333, activity 165), and
3 Higher Education Technology Initiative - Surplus (fund 0333,
4 activity 508) at the close of the fiscal year are hereby
5 reappropriated for expenditure during the fiscal year 2002.

6 Any balances so reappropriated are redesignated into the
7 Higher Education Policy Commission - Administration (organi-
8 zation 0441), Higher Education Policy Commission - Adminis-
9 tration Control Account (fund 0589).

47—Board of Trustees of the

University System of West Virginia—

Control Account

(WV Code Chapter 18B)

Fund 0327 FY 2002 Org 0461

1 Any unexpended balances remaining in the appropriations
2 for Marshall University - Southern WV Community and
3 Technical College 2 + 2 Program (fund 0327, activity 170),
4 Jackson's Mill (fund 0327, activity 461), Marshall and West
5 Virginia University Faculty and Course Development Interna-
6 tional Study Project (fund 0327, activity 549), Marshall
7 University - Forensic Lab (fund 0327, activity 572), Coal and
8 Energy Research Bureau (fund 0327, activity 827), Jackson's
9 Mill Surplus (fund 0327, activity 842), and WVU College of
10 Engineering and Mineral Resources - Diesel Study (fund 0327,
11 activity 852) at the close of fiscal year 2001 are hereby
12 reappropriated for expenditure during the fiscal year 2002.

13 Any balances so reappropriated are redesignated into the
14 Higher Education Policy Commission - System (organization
15 0442), Higher Education Policy Commission - System Control
16 Account (fund 0586).

48—Board of Trustees of the University System of West Virginia—

University of West Virginia—

Health Sciences Account

(WV Code Chapter 18B)

Fund 0323 FY 2002 Org 0478

1 Any unexpended balances remaining in the appropriations
 2 for Primary Health Education Program Support (fund 0323,
 3 activity 177), Graduate Medical Education (fund 0323, activity
 4 197), Marshall University - Center for Rural Health (fund 0323,
 5 activity 198), School of Osteopathic Medicine - Capital
 6 Improvement (fund 0323, activity 204), Correctional
 7 Telemedicine Project (fund 0323, activity 406), WVU
 8 Charleston Division - Poison Control Hot Line (fund 0323,
 9 activity 510), Capital Outlay and Equipment (fund 0323,
 10 activity 542), and Rural Health Initiative Site Support Program
 11 (fund 0323, activity 853), at the close of the fiscal year 2001 are
 12 hereby reappropriated for expenditure during the fiscal year
 13 2002.

14 Any balances so reappropriated are redesignated into the
 15 Higher Education Policy Commission - Health Sciences
 16 (organization 0477), Higher Education Policy Commission -
 17 Health Sciences Control Account (fund 0590).

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

(WV Code Chapter 18)

Fund 0310 FY 2002 Org 0932

1	Personal Services	001	\$ 4,493,386
2	Annual Increment	004	124,961
3	Employee Benefits	010	1,705,731
4	Unclassified	099	150,000
5	Case Services	162	2,220,603
6	Workshop Development	163	1,799,000

Ch. 1] APPROPRIATIONS 2901

7	Supported Employment		
8	Extended Services	206	121,250
9	Capital Outlay - Restrooms	301	300,000
10	Ron Yost Personal Assistance Fund ...	407	291,000
11	Traumatic Brain and Spinal Cord Injury	813	242,500
12	BRIM Premium	913	<u>45,463</u>
13	Total		\$ 11,493,894

14 Any unexpended balance remaining in the appropriation for
 15 Technology—Related Assistance Revolving Loan Fund for
 16 Individuals with Disabilities (fund 0310, activity 766) at the
 17 close of the fiscal year 2001 is hereby reappropriated for
 18 expenditure during the fiscal year 2002 and may be transferred
 19 to a special account for the purpose of disbursement or loan.

**DEPARTMENT OF HEALTH
 AND HUMAN RESOURCES**

50—Department of Health and Human Resources—

Office of the Secretary

(WV Code Chapter 5F)

Fund 0400 FY 2002 Org 0501

1	Unclassified—Total	096	\$	138,065
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51—Division of Health—

Central Office

(WV Code Chapter 16)

Fund 0407 FY 2002 Org 0506

1	Personal Services	001	\$	7,850,082
2	Annual Increment	004		131,907

3	Employee Benefits	010	3,274,495
4	Unclassified	099	5,093,537
5	Appalachian State Low Level Radioactive		
6	Waste Commission	185	48,000
7	Safe Drinking Water Program	187	514,066
8	Pet Scan Support	209	200,000
9	Women, Infants and Children	210	45,000
10	Basic Public Health Services Support . .	212	4,327,657
11	Emergency Response Entities Support .	213	0
12	Financial Assistance for Primary Health		
13	Care Facilities	215	0
14	County Wellness Institute Programs . . .	216	200,000
15	Early Intervention	223	2,018,357
16	Cancer Registry	225	274,374
17	Primary Care Centers—		
18	Mortgage Finance	413	400,000
19	Black Lung Clinics	467	200,000
20	Pediatric Dental Services	550	150,000
21	Vaccine for Children	551	433,168
22	Adult Influenza Vaccine	552	65,000
23	Tuberculosis Control	553	254,352
24	Regional EMS Entities	557	0
25	Maternal and Child Health Clinics,		
26	Clinicians and Medical Contracts		
27	and Fees (R)	575	4,673,043
28	Epidemiology Support	626	381,591
29	Rural EMS Equipment and Training . . .	627	0
30	Primary Care Support	628	7,261,644
31	State Aid to Local Health Departments .	702	8,930,684
32	Health Right Free Clinics	727	2,252,666
33	Osteoporosis Prevention Fund	729	306,762
34	State EMS Coordinator	738	0
35	EMS Training for Children	739	0
36	Emergency Response Entities—Special		
37	Projects	822	1,500,000

Ch. 1]	APPROPRIATIONS	2903
38	BRIM Premium	913 161,860
39	CARDIAC Project	375 220,000
40	Primary Care Centers—	
41	Financial Assistance	376 350,000
42	State EMS Technical Assistance	379 1,408,929
43	EMS Agency Uncompensated	
44	Care Support	380 250,000
45	EMS Program for Children	381 50,000
46	Statewide EMS Program Support	383 <u>560,664</u>
47	Total	\$ 53,787,838

48 Any unexpended balances remaining in the appropriations
49 for Unclassified (fund 0407, activity 099, fiscal year 1997) and
50 Maternal and Child Health Clinics, Clinicians and Medical
51 Contracts and Fees (fund 0407, activity 575) at the close of the
52 fiscal year 2001 are hereby reappropriated for expenditure
53 during the fiscal year 2002 with the exception of fund 0407,
54 fiscal year 2001, activity 575 (\$598,011) which shall expire on
55 June 30, 2001.

56 From the Maternal and Child Health Clinics, Clinicians,
57 and Medical Contracts and Fees line item, \$400,000 shall be
58 transferred to the Breast and Cervical Cancer Diagnostic
59 Treatment Fund.

52—Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 0525 FY 2002 Org 0506

1	Personal Services	001	\$	553,928
2	Annual Increment	004		10,300
3	Employee Benefits	010		231,634
4	Special Olympics	208		26,074
5	Behavioral Health Program—			
6	Unclassified (R)	219		26,252,137

7	Family Support Act	221	1,093,339
8	Institutional Facilities Operations	335	20,028,484
9	Colin Anderson Community		
10	Placement (R)	803	3,365,284
11	Renaissance Program	804	200,000
12	BRIM Premium	913	<u>875,704</u>
13	Total		\$ 52,636,884

14 Any unexpended balances remaining in the appropriations
15 for Behavioral Health Program—Unclassified (fund 0525,
16 activity 219) and Colin Anderson Community Placement (fund
17 0525, activity 803) at the close of the fiscal year 2001 are
18 hereby reappropriated for expenditure during the fiscal year
19 2002 with the exception of fund 0525, fiscal year 2001, activity
20 219 (\$719,874) and fund 0525, fiscal year 2001, activity 803
21 (\$68,679) which shall expire on June 30, 2001.

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

33 From the Colin Anderson Community Placement (fund
34 0525, activity 803) funds may be both expended for the
35 community placement costs of the Colin Anderson clients and
36 transferred to the Medical Services Program Fund to pay the
37 Medicaid state share of the Medicaid cost of Colin Anderson
38 clients in the community.

39 Additional funds have been appropriated in fund 5124,
 40 fiscal year 2002, organization 0506 and fund 5156, fiscal year
 41 2002, organization 0506, for the operation of the institutional
 42 facilities. The secretary of the department of health and human
 43 resources is authorized to utilize up to ten percent of the funds
 44 from the Institutional Facilities Operations line item to facilitate
 45 cost effective and cost saving services at the community level.

53—Division of Health—

West Virginia Drinking Water Treatment

(WV Code Chapter 16)

Fund 0561 FY 2002 Org 0506

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

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

54—Human Rights Commission

(WV Code Chapter 5)

Fund 0416 FY 2002 Org 0510

1 Personal Services 001 \$ 622,810
 2 Annual Increment 004 13,500
 3 Employee Benefits 010 230,735
 4 Unclassified 099 246,794
 5 Anti-Hate Program and
 6 Human Rights Summit 815 18,000

7	BRIM Premium	913	<u>15,384</u>
8	Total		\$ 1,147,223

55—Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2002 Org 0511

1	Personal Services	001	\$ 21,672,761
2	Annual Increment	004	456,261
3	Employee Benefits	010	8,325,794
4	Unclassified	099	20,149,081
5	Child Care Development	144	1,448,555
6	Medical Services Contracts and Office of		
7	Managed Care	183	2,333,703
8	Medical Services	189	189,247,553
9	Women's Commission	191	137,392
10	Social Services	195	40,105,425
11	Family Preservation Program	196	1,565,000
12	James "Tiger" Morton Catastrophic		
13	Illness Fund	455	1,000,000
14	Child Protective Services		
15	Case Workers	468	8,830,039
16	Medical Services Trust Fund Transfer	512	5,000,000
17	OSCAR and RAPIDS	515	3,490,227
18	Child Welfare System	603	2,588,807
19	Commission for the Deaf and		
20	Hard of Hearing	704	273,482
21	Child Support Enforcement	705	2,863,125
22	Medicaid Auditing	706	595,773
23	Temporary Assistance for Needy		
24	Families/Maintenance of Effort ..	707	23,587,807
25	Child Care—		
26	Maintenance of Effort and Match .	708	4,409,643
27	Grants for Licensed Domestic Violence		

28	Programs and Statewide Prevention	750	1,000,000
29	Indigent Burials (R)	851	1,274,000
30	BRIM Premium	913	667,631
31	Domestic Violence Legal Services Fund	384	<u>150,000</u>
32	Total		\$341,172,059

33 Any unexpended balance remaining in the appropriation for
 34 Indigent Burials (fund 0403, activity 851) at the close of fiscal
 35 year 2001 is hereby reappropriated for expenditure during fiscal
 36 year 2002.

37 The above appropriation for James “Tiger” Morton
 38 Catastrophic Illness Fund (activity 455) shall be transferred to
 39 the James “Tiger” Morton Catastrophic Illness Fund (fund
 40 5454) as provided by Chapter 16, Article 5Q, of the Code.

41 The above appropriation for Domestic Violence Legal
 42 Services Fund (activity 384) shall be transferred to the Domes-
 43 tic Violence Legal Services Fund (fund 5455).

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

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

**DEPARTMENT OF MILITARY AFFAIRS
 AND PUBLIC SAFETY**

Office of the Secretary

(WV Code Chapter 5F)

Fund 0430 FY 2002 Org 0601

1	Unclassified	099	\$	697,287
2	BRIM Premium	913		<u>3,842</u>
3	Total		\$	701,129

4 Any unexpended balance remaining in the appropriation for
5 Bland Memorial Fund (fund 0430, activity 332) at the close of
6 the fiscal year 2001 is hereby reappropriated for expenditure
7 during the fiscal year 2002 and shall be transferred to the Law-
8 Enforcement, Safety and Emergency Worker Funeral Expense
9 Payment Fund (fund 6003) as provided by Chapter 15, Article
10 11 of the Code.

*57—Adjutant General—**State Militia*

(WV Code Chapter 15)

Fund 0433 FY 2002 Org 0603

1	Personal Services	001	\$	376,639
2	Annual Increment	004		7,750
3	Employee Benefits	010		131,218
4	Unclassified (R)	099		12,939,100
5	BRIM Premium	913		<u>14,457</u>
6	Total		\$	13,469,164

7 Any unexpended balance remaining in the appropriation for
8 Unclassified (fund 0433, activity 099) at the close of the fiscal
9 year 2001 is hereby reappropriated for expenditure during the
10 fiscal year 2002, with the exception of fund 0433, fiscal year

11 2001, activity 099 (\$339,559) which shall expire on June 30,
12 2001.

13 From the above appropriation an amount approved by the
14 adjutant general and the secretary of military affairs and public
15 safety may be transferred to the State Armory Board for
16 operation and maintenance of National Guard Armories.

58—West Virginia Parole Board

(WV Code Chapter 62)

Fund 0440 FY 2002 Org 0605

1	Personal Services	001	\$	118,258
2	Annual Increment	004		1,100
3	Employee Benefits	010		114,909
4	Unclassified	099		45,362
5	Salaries of Members of West Virginia			
6	Parole Board	227		225,000
7	BRIM Premium	913		<u>20,189</u>
8	Total		\$	524,818

59—Office of Emergency Services

(WV Code Chapter 15)

Fund 0443 FY 2002 Org 0606

1	Personal Services	001	\$	219,002
2	Annual Increment	004		5,300
3	Employee Benefits	010		78,513
4	Unclassified	099		31,696
5	Federal Emergency Management Agency			
6	Match (R)	188		210,937
7	Community Emergency Response	220		50,000
8	Flood Reparations	400		2,297,999

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9	Early Warning Flood System	877	324,000
10	BRIM Premium	913	<u>6,072</u>
11	Total		\$ 3,223,519

12 Any unexpended balance remaining in the appropriations
 13 for Federal Emergency Management Agency Match (fund
 14 0443, activity 188), Unclassified—Surplus (fund 0443, activity
 15 097), at the close of the fiscal year 2001 are hereby
 16 reappropriated for expenditure during the fiscal year 2002, with
 17 the exception of fund 0443, fiscal year 2001, activity 188
 18 (\$1,425) which shall expire on June 30, 2001.

60—*Division of Corrections—*

Central Office

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

Fund 0446 FY 2002 Org 0608

1	Personal Services	001	\$ 377,868
2	Annual Increment	004	5,475
3	Employee Benefits	010	115,707
4	Unclassified	099	98,162
5	Management Information System	398	<u>2,070,000</u>
6	Total		\$ 2,667,212

61—*Division of Corrections—*

Correctional Units

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

Fund 0450 FY 2002 Org 0608

1	Personal Services	001	\$ 1,182,630
2	Employee Benefits	010	202,821
3	Unclassified	099	450,000

4	Payments to Counties and/		
5	or Regional Jails	229	9,000,000
6	Charleston Work Release	456	805,229
7	Beckley Correctional Center	490	879,268
8	Huntington Work Release	495	685,920
9	Anthony Center	504	3,881,352
10	Huttonsville Correctional Center	514	12,912,723
11	Northern Correctional Facility	534	5,708,825
12	Inmate Medical Expenses	535	9,110,767
13	Pruntytown Correctional Center	543	5,172,369
14	Corrections Academy	569	953,311
15	Parole Services	686	1,908,636
16	Special Services	687	2,037,486
17	St. Mary's Correctional Facility	881	7,864,230
18	Denmar Correctional Facility	882	3,399,737
19	Ohio County Correctional Facility	883	1,126,069
20	Mt. Olive Correctional Facility	888	15,485,255
21	BRIM Premium	913	<u>560,889</u>
22	Total		\$ 83,327,517

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

33 From the above appropriation to Unclassified, on July 1,
34 2001, the sum of two hundred thousand dollars shall be
35 transferred to the department of agriculture—land division as
36 advance payment for the purchase of food products; actual

37 payments for such purchases shall not be required until such
38 credits have been completely expended.

62—*West Virginia State Police*

(WV Code Chapter 15)

Fund 0453 FY 2002 Org 0612

1	Personal Services	001	\$ 27,666,436
2	Annual Increment	004	154,250
3	Employee Benefits	010	5,204,519
4	Unclassified	099	5,228,372
5	COPS Program Federal Match	327	1,457,090
6	Vehicle Purchase	451	1,000,000
7	Barracks Maintenance and		
8	Construction (R)	494	1,719,388
9	Communications and		
10	Other Equipment (R)	558	2,000,000
11	Trooper Retirement Fund	605	20,016,162
12	Handgun Administration Expense	747	68,276
13	Debt Payment/Capital Outlay, Renovations,		
14	Repair to Barracks (R)	751	0
15	COPS—Telecommunicators Match ...	816	0
16	Automated Fingerprint		
17	Identification System	898	450,158
18	BRIM Premium	913	<u>1,700,000</u>
19	Total		\$ 66,664,651

20 Any unexpended balances remaining in the appropriations
21 for Barracks Maintenance and Construction (fund 0453, activity
22 494), Communications and Other Equipment (fund 0453,
23 activity 558) and Debt Payment/Capital Outlay, Renovations,
24 Repairs to Barracks (fund 0453, activity 751) at the close of the
25 fiscal year 2001 are hereby reappropriated for expenditure
26 during the fiscal year 2002, with the exception of fund 0453,
27 fiscal year 2001, activity 558 (\$384,559) and fund 0453, fiscal

28 year 2001, activity 751 (\$1,365,000) which shall expire on June
29 30, 2001.

63—Division of Veterans' Affairs

(WV Code Chapter 9A)

Fund 0456 FY 2002 Org 0613

1	Personal Services	001	\$	773,001
2	Annual Increment	004		18,300
3	Employee Benefits	010		357,475
4	Unclassified	099		16,570
5	Veterans' Field Offices	228		129,692
6	Veterans' Toll Free Assistance Line ...	328		5,000
7	Veterans' Reeducation Assistance (R) .	329		216,141
8	Veterans' Field Office Improvements (R)	331		57,550
9	Veterans' Grant Program	342		150,000
10	Memorial Day Patriotic Exercise	697		20,000
11	BRIM Premium	913		23,741
12	Women's Veterans' Monument	385		<u>100,000</u>
13	Total		\$	1,867,470

14 Any unexpended balances remaining in the appropriations
15 for Veterans' Reeducation Assistance (fund 0456, activity 329),
16 Veterans' Field Office Improvements (fund 0456, activity 331),
17 and Veterans' Monuments (fund 0456, activity 817) at the close
18 of the fiscal year 2001 are hereby reappropriated for expendi-
19 ture during the fiscal year 2002 with the exception of fund
20 0456, fiscal year 2001, activity 329 (\$53,859) which shall
21 expire on June 30, 2001.

64—Division of Veterans' Affairs—

Veterans' Home

(WV Code Chapter 9A)

Fund 0460 FY 2002 Org 0618

1	Personal Services	001	\$	640,165
2	Annual Increment	004		13,800
3	Employee Benefits	010		279,220
4	Unclassified	099		<u>150,737</u>
5	Total		\$	1,083,922

65—Fire Commission

(WV Code Chapter 29)

Fund 0436 FY 2002 Org 0619

1	Personal Services	001	\$	595,505
2	Annual Increment	004		11,000
3	Employee Benefits	010		200,567
4	Unclassified	099		170,176
5	BRIM Premium	913		<u>20,940</u>
6	Total		\$	998,188

66—Division of Criminal Justice Services

(Executive Order)

Fund 0546 FY 2002 Org 0620

1	Personal Services	001	\$	206,875
2	Annual Increment	004		2,983
3	Employee Benefits	010		75,375
4	Unclassified	099		145,667
5	Community Corrections - First Circuit			
6	(one-time)	387		300,000
7	Statistical Analysis Program	597		52,083
8	BRIM Premium	913		<u>58</u>
9	Total		\$	783,041

67—Division of Juvenile Services-

(WV Code Chapter 49)

Fund 0570 FY 2002 Org 0621

1	Personal Services	001	\$ 13,011,332
2	Annual Increment	004	62,350
3	Employee Benefits	010	4,859,693
4	Unclassified (R)	099	3,519,751
5	BRIM Premium	913	<u>17,587</u>
6	Total		\$ 21,470,713

7 Any unexpected balances remaining the appropriation for
8 Unclassified (fund 0570, activity 099) at the close of fiscal year
9 2001 is hereby reappropriated for expenditure during the fiscal
10 year 2002 with the exception of fund 0570, fiscal year 2001,
11 activity 099 (\$582,069) which shall expire on June 30, 2001.

68—Division of Protective Services

(WV Code Chapter 15)

Fund 0585 FY 2002 Org 0622

1	Unclassified	099	\$ 469,714
2	Equipment (R)	070	<u>504,958</u>
3	Total		\$ 974,672

4 Any unexpended balance remaining in the appropriation for
5 Equipment (fund 0585, activity 070) at the close of the fiscal
6 year 2001 is hereby reappropriated for expenditure during the
7 fiscal year 2002, with the exception of fund 0585, fiscal year
8 2001, activity 070 (\$30,042) which shall expire on June 30,
9 2001.

DEPARTMENT OF TAX AND REVENUE*69—Department of Tax and Revenue—**Office of the Secretary*

(WV Code Chapter 5F)

Fund 0465 FY 2002 Org 0701

1	Unclassified	099	\$ 425,427
2	BRIM Premium	913	<u>6,084</u>
3	Total		\$ 431,511

70—Tax Division

(WV Code Chapter 11)

Fund 0470 FY 2002 Org 0702

1	Personal Services	001	\$ 10,769,745
2	Annual Increment	004	218,700
3	Employee Benefits	010	3,432,230
4	Unclassified	099	7,433,775
5	Remittance Processor	570	297,800
6	BRIM Premium	913	<u>4,598</u>
7	Total		\$ 22,156,848

8 Any unexpended balances remaining in the appropriations
9 for Automation Project (fund 0470, activity 442), Automation
10 Project—Total—Surplus (fund 0470, activity 673) and Property
11 Tax Valuation and Assessment System (fund 0470, activity
12 477) at the close of the fiscal year 2001 are hereby
13 reappropriated for expenditure during the fiscal year 2002.

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

(WV Code Chapter 29)

Fund 0523 FY 2002 Org 0933

1	Unclassified	099	\$	6,738
2	BRIM Premium	913		<u>1,262</u>
3	Total		\$	8,000

DEPARTMENT OF TRANSPORTATION*72—State Rail Authority*

(WV Code Chapter 29)

Fund 0506 FY 2002 Org 0804

1	Unclassified	099	\$	2,645,072
2	BRIM Premium	913		<u>8,172</u>
3	Total		\$	2,653,244

73—Division of Public Transit

(WV Code Chapter 17)

Fund 0510 FY 2002 Org 0805

1	Unclassified (R)	099	\$	1,024,693
2	Federal Funds/Grant Match (R)	749		0
3	Grant Match	388		1,067,000
4	BRIM Premium	913		<u>216</u>
5	Total		\$	2,091,909

6 Any unexpended balances remaining in the appropriations
7 for Unclassified (fund 0510, activity 099) and Federal
8 Funds/Grant Match (fund 0510, activity 749) at the close of the
9 fiscal year 2001 are hereby reappropriated for expenditure
10 during the fiscal year 2002, with the exception of fund 0510,
11 fiscal year 2001, activity 099 (\$27,890) and fund 0510, fiscal

12 year 2001, activity 749 (\$33,000) which shall expire on June
13 30, 2001.

74—Public Port Authority

(WV Code Chapter 17)

Fund 0581 FY 2002 Org 0806

1 Unclassified—Total (R) 096 \$ 995,753

2 Any unexpended balances remaining in the appropriation
3 for Unclassified—Total (fund 0581, activity 096) and Port
4 Authority (fund 0581, activity 443) at the close of the fiscal
5 year 2001 are hereby reappropriated for expenditure during the
6 fiscal year 2002, with the exception of fund 0581, fiscal year
7 2001, activity 096 (\$17,866) which shall expire on June 30,
8 2001.

75—Aeronautics Commission

(WV Code Chapter 29)

Fund 0582 FY 2002 Org 0807

1	Unclassified (R)	099	\$ 1,666,162
2	Civil Air Patrol	234	86,952
3	Potomac Highlands Airport Authority . .	444	<u>0</u>
4	Total		\$ 1,753,114

5 Any unexpended balances remaining in the appropriation
6 for Unclassified (fund 0582, activity 099) and Unclassi-
7 fied—Total (fund 0582, activity 096) at the close of the fiscal
8 year 2001 are hereby reappropriated for expenditure during the
9 fiscal year 2002, with the exception of fund 0582, fiscal year
10 2001, activity 099 (\$27,038) which shall expire on June 30,
11 2001.

BUREAU OF COMMERCE

76—Division of Forestry

(WV Code Chapter 19)

Fund 0250 FY 2002 Org 0305

1	Personal Services	001	\$ 1,430,011
2	Annual Increment	004	33,250
3	Employee Benefits	010	597,352
4	Unclassified	099	290,666
5	Aerial Tanker Airplanes	752	200,000
6	BRIM Premium	913	<u>44,345</u>
7	Total		\$ 2,595,624

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

77—Geological and Economic Survey

(WV Code Chapter 29)

Fund 0253 FY 2002 Org 0306

1	Personal Services	001	\$ 1,246,183
2	Annual Increment	004	27,692
3	Employee Benefits	010	420,748
4	Unclassified	099	326,496
5	Mineral Mapping System (R)	207	1,397,350
6	Geographic Information System (R) ...	214	303,125
7	Computer Upgrade	349	1,125
8	BRIM Premium	913	<u>12,257</u>
9	Total		\$ 3,734,976

10 Any unexpended balances remaining in the appropriations
11 for Mineral Mapping System (fund 0253, activity 207),

12 Geographic Information System (fund 0253, activity 214) and
 13 Computer Upgrade—Surplus (fund 0253, activity 874) at the
 14 close of the fiscal year 2001 are hereby reappropriated for
 15 expenditure during the fiscal year 2002, with the exception of
 16 fund 0253, fiscal year 2001, activity 207 (\$115,001) which shall
 17 expire on June 30, 2001.

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

78—West Virginia Development Office

(WV Code Chapter 5B)

Fund 0256 FY 2002 Org 0307

1	Personal Services	001	\$ 2,308,235
2	Annual Increment	004	29,962
3	Employee Benefits	010	676,544
4	Unclassified	099	2,658,950
5	West Virginia Steel Advisory	230	77,600
6	Partnership Grants (R)	131	4,890,699
7	National Youth Science Camp	132	194,000
8	Local Economic Development		
9	Partnerships (R)	133	1,600,500
10	ARC Assessment	136	167,308
11	Institute for Software Research	217	97,000
12	Mid-Atlantic Aerospace Complex	231	618,250
13	Guaranteed Work Force Grant (R)	242	3,413,838
14	Sunny Day Fund	283	0
15	Advantage Valley	389	100,000
16	Chemical Alliance Zone	390	50,000
17	WV High Tech Consortium	391	100,000
18	Economic Development Assistance	900	1,250,000
19	Small Business Financial Assistance (R)	360	407,142

20	Robert C. Byrd Institute for Advanced/		
21	Flexible Manufacturing— Technology		
22	Outreach and Programs for		
23	Environmental and Advanced		
24	Technologies	367	700,000
25	Industrial Park Assistance (R)	480	1,358,000
26	WV Film Development Office	498	103,273
27	Leverage Technology and Small Business		
28	Development Program (R)	525	824,500
29	International Offices (R)	593	926,966
30	WV Manufacturing Extension		
31	Partnership	731	194,000
32	Small Business Work Force (R)	735	363,686
33	Polymer Alliance	754	97,000
34	National Institute of Chemical Studies .	805	97,000
35	Local Economic Development		
36	Assistance (R)	819	7,000,000
37	Community College Workforce		
38	Development (R)	878	827,500
39	BRIM Premium	913	<u>1,464</u>
40	Total		\$ 31,133,417

41 Any unexpended balances remaining in the appropriations
42 for Partnership Grants (fund 0256, activity 131), Guaranteed
43 Work Force Grant (fund 0256, activity 242), Local Economic
44 Development Partnerships (fund 0256, activity 133), European
45 Trade and Tourism Office (fund 0256, activity 763), Local
46 Economic Development Assistance (fund 0256, activity 819),
47 Small Business Financial Assistance (fund 0256, activity 360),
48 Industrial Park Assistance (fund 0256, activity 480), Leverage
49 Technology and Small Business Development Program (fund
50 0256, activity 525), Small Business Work Force (fund 0256,
51 activity 735), International Offices (fund 0256, activity 593),
52 Office of Coalfield Community Development (fund 0256,
53 activity 326), Community College Workforce Development
54 (fund 0256, activity 878), Economic Development Assistance

55 (fund 0256, activity 900) and Technology Initiatives (fund
 56 0256, activity 901) at the close of the fiscal year 2000 are
 57 hereby reappropriated for expenditure during the fiscal year
 58 2002, with the exception of fund 0256, fiscal year 2001, activity
 59 133 (\$158,000); fund 0256, fiscal year 2001, activity 360
 60 (\$45,500); fund 0256, fiscal year 2001, activity 525 (\$99,655);
 61 fund 0256, fiscal year 2001, activity 593 (\$65,000); fund 0256,
 62 fiscal year 2001, activity 735 (\$10,000); fund 0256, fiscal year
 63 2001, activity 819 (\$370,000); fund 0256, fiscal year 2001,
 64 activity 878 (\$22,500); fund 0256, fiscal year 2001, activity 480
 65 (\$171,500) which shall expire on June 30, 2001.

66 The above appropriation to Local Economic Development
 67 Partnerships shall be used by the West Virginia development
 68 office for the award of funding assistance to county and
 69 regional economic development corporations or authorities
 70 participating in the certified development community program
 71 developed under the provisions of section three, article two,
 72 chapter five-b of the code. The West Virginia development
 73 office shall award the funding assistance through a matching
 74 grant program, based upon a formula whereby funding assis-
 75 tance may not exceed thirty thousand dollars per county served
 76 by an economic development corporation or authority.

79—Division of Labor

(WV Code Chapters 21 and 47)

Fund 0260 FY 2002 Org 0308

1	Personal Services	001	\$ 1,738,179
2	Annual Increment	004	22,853
3	Employee Benefits	010	613,905
4	Unclassified	099	970,898
5	BRIM Premium	913	<u>36,416</u>
6	Total		\$ 3,382,251

7 Any unexpended balance remaining in the appropriation for
 8 Computer/Technology Upgrades (fund 0260, activity 322) at
 9 the close of the fiscal year 2001 is hereby reappropriated for
 10 expenditure during the fiscal year 2002.

80—Division of Natural Resources

(WV Code Chapter 20)

Fund 0265 FY 2002 Org 0310

1	Personal Services	001	\$ 8,772,196
2	Annual Increment	004	250,844
3	Employee Benefits	010	3,419,064
4	Unclassified	099	42,481
5	Nongame Wildlife	527	0
6	Litter Control Conservation Officers . . .	564	202,280
7	West Virginia Stream Partners Program	637	0
8	Upper Mud River Flood Control	654	198,858
9	Law Enforcement	806	484,999
10	BRIM Premium	913	<u>259,032</u>
11	Total		\$ 13,629,754

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

81—Division of Miners' Health, Safety and Training

(WV Code Chapter 22)

Fund 0277 FY 2002 Org 0314

1	Personal Services	001	\$ 3,715,053
2	Annual Increment	004	65,800

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3	Employee Benefits	010	1,288,212
4	Unclassified	099	796,162
5	BRIM Premium	913	<u>36,539</u>
6	Total		\$ 5,901,766

82—Board of Coal Mine Health and Safety

(WV Code Chapter 22)

Fund 0280 FY 2002 Org 0319

1	Personal Services	001	\$ 96,588
2	Annual Increment	004	530
3	Employee Benefits	010	24,579
4	Unclassified	099	<u>35,584</u>
5	Total		\$ 157,281

83—Coal Mine Safety and Technical Review Committee

(WV Code Chapter 22)

Fund 0285 FY 2002 Org 0320

1	Unclassified—Total	096	\$ 71,231
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DEPARTMENT OF ENVIRONMENT

84—Environmental Quality Board

(WV Code Chapter 20)

Fund 0270 FY 2002 Org 0311

1	Personal Services	001	\$ 90,219
2	Annual Increment	004	584
3	Employee Benefits	010	20,305
4	Unclassified	099	<u>52,731</u>
5	Total		\$ 163,839

85—Interstate Commission on Potomac River Basin

(WV Code Chapter 29)

Fund 0263 FY 2002 Org 0313

1	West Virginia's Contribution to the			
2	Interstate Commission			
3	on Potomac River Basin—Total . . .	134	\$	47,000

86—Ohio River Valley Water Sanitation Commission

(WV Code Chapter 29)

Fund 0264 FY 2002 Org 0313

1	West Virginia's Contribution to the			
2	Ohio River Valley Water			
3	Sanitation Commission—Total	135	\$	134,300

87—Division of Environmental Protection

(WV Code Chapter 22)

Fund 0273 FY 2002 Org 0313

1	Personal Services	001	\$	4,550,160
2	Annual Increment	004		68,503
3	Employee Benefits	010		1,457,082
4	Unclassified	099		1,299,773
5	Dam Safety	607		179,207
6	Office of Water Resources			
7	Non-Enforcement	855		1,170,829
8	BRIM Premium	913		<u>12,462</u>
9	Total		\$	8,738,016
10	Any unexpended balance remaining in the appropriation for			
11	Office of Water Resources—Equipment—Surplus (fund 0273,			

12 activity 875) at the close of the fiscal year 2001 is hereby
 13 reappropriated for expenditure during the fiscal year 2002.

88—Air Quality Board

(WV Code Chapter 16)

Fund 0550 FY 2002 Org 0325

1	Unclassified	099	\$	102,487
2	BRIM Premium	913		<u>1,300</u>
3	Total		\$	103,787

BUREAU OF SENIOR SERVICES

89—Bureau of Senior Services

(WV Code Chapter 29)

Fund 0420 FY 2002 Org 0508

1	Personal Services	001	\$	125,782
2	Annual Increment	004		1,750
3	Employee Benefits	010		57,484
4	Unclassified	099		523,471
5	Silver Haired Legislature	202		14,400
6	Area Agencies Administration	203		87,428
7	Foster Grandparents Stipends and Travel	205		50,000
8	In-Home Services for Senior Citizens . .	224		0
9	BRIM Premium	913		<u>2,075</u>
10	Total		\$	862,390

BUREAU OF EMPLOYMENT PROGRAMS

90—Bureau of Employment Programs

(WV Code Chapter 23)

Fund 0572 FY 2002 Org 0323

1 Any unexpended balance remaining in the appropriation for
 2 Welfare-to-Work—Total (fund 0572, activity 416) at the close
 3 of the fiscal year 2001 is hereby reappropriated for expenditure
 4 during the fiscal year 2002, with the exception of 0572, fiscal
 5 year 2001, activity 416 (\$30,000) which shall expire on June
 6 30, 2001.

HIGHER EDUCATION POLICY COMMISSION

91—Higher Education Policy Commission—

Administration—

Control Account

(WV Code Chapters 18B)

Fund 0589 FY 2002 Org 0441

1	Unclassified	099	\$ 2,725,667
2	Joint Commission on Vocational - Technical -		
3	Occupational Education	109	0
4	West Virginia Council for Community and		
5	Technical Education	392	234,648
6	Tuition Contract Program	165	0
7	WVNET	169	2,743,162
8	BRIM Premium	913	<u>678,467</u>
9	Total		\$ 6,381,944

92—Higher Education Policy Commission—

System—

Control Account

(WV Code Chapter 18B)

Fund 0586 FY 2002 Org 0442

1	Bluefield State College	408	\$ 2,013,001
2	Bluefield State Community and Technical		
3	College	409	5,354,500
4	Concord College	410	9,535,044
5	Eastern West Virginia Community and		
6	Technical College	412	2,000,000
7	Fairmont State College	414	13,002,398
8	Fairmont State Community and Technical		
9	College	421	6,829,430
10	Glenville State College	428	4,901,527
11	Glenville State Community and Technical		
12	College	430	2,855,140
13	Shepherd College	432	9,569,310
14	Shepherd Community and		
15	Technical College	434	2,046,636
16	West Liberty State College	439	10,018,368
17	West Virginia State College	441	11,253,723
18	West Virginia State Community and		
19	Technical College	445	2,706,078
20	Southern West Virginia Community and		
21	Technical College	446	7,170,347
22	West Virginia Northern Community and		
23	Technical College	447	5,627,211
24	Marshall University	448	59,870,004
25	Marshall University Medical School		
26	BRIM Subsidy	449	627,468
27	Marshall University Community and		
28	Technical College	487	5,004,269
29	West Virginia University	459	174,173,053
30	West Virginia University School of		
31	Medicine BRIM Subsidy	460	1,277,799
32	West Virginia University - Parkersburg	471	7,781,835
33	Potomac State College of West Virginia		
34	University	475	4,428,725

35	West Virginia University Institute for		
36	Technology	479	7,123,280
37	West Virginia University Institute for		
38	Technology Community and Technical		
39	College	486	3,217,617
40	Unclassified	099	0
41	Marshall University - Southern		
42	WV Community and Technical		
43	College 2+2 Program	170	0
44	Jackson's Mill	461	0
45	Marshall University Autism		
46	Training Center	548	0
47	Marshall and West Virginia University		
48	Faculty and Course Development		
49	International Study Project	549	0
50	Marshall University - Forensic Lab . . .	572	0
51	WVU Law School Skills Program	745	0
52	WVU Coal, Energy Resources Bureau	827	0
53	WVU College of Engineering and		
54	Mineral Resources -		
55	Diesel Training - Transfer	852	<u>0</u>
56	Total		\$358,386,763

57 Included in the above appropriation for West Virginia
58 University and Marshall University are \$1,047,000 and
59 \$350,000, respectively, for Graduate Medical Education which
60 may be transferred to the Department of Health and Human
61 Resources' Medical Service Fund (fund 5084) for the purpose
62 of matching federal or other funds to be used in support of
63 graduate medical education, subject to the approval of the Vice-
64 Chancellor for Health Sciences and the Secretary of the
65 Department of Health and Human Resources. If approval is
66 denied, the funds may be utilized by the respective institutions
67 for expenditure.

68 Included in the above appropriation for West Virginia
69 University is \$250,000 for the WVU Law School-Skills
70 Program (activity 745), \$150,000 for the WVU Coal and
71 Energy Research Bureau (activity 827), \$20,000 for the WVU
72 College of Engineering and Mineral Resources-Diesel Training-
73 Transfer (activity 852), \$35,000 for the Marshall and WVU
74 Faculty and Course Development International Study Project
75 (activity 549), \$43,745,897 for the WVU School of Health
76 Sciences (activity 178), \$4,173,084 for the WVU School of
77 Health Sciences - Charleston Division (activity 175),
78 \$1,109,584 for Rural Health Initiative Site Support Program
79 (activity 853), \$3,382,847 for Primary Health Education
80 Program Support (activity 177), and \$517,866 for the WVU
81 Charleston Division Poison Control Hotline (activity 510).

82 Included in the above appropriation for Marshall University
83 is \$186,887 for the Marshall University-Southern West Virginia
84 Community and Technical College 2+2 Program (activity 170),
85 \$614,018 for the Marshall University Autism Training Center
86 (activity 548), \$480,707 for the Marshall University Forensic
87 Lab (activity 572), \$12,137,291 for the Marshall Medical
88 School (activity 173), \$957,000 for Rural Health Initiative Site
89 Support Program (activity 853), and \$967,532 for Primary
90 Health Education Program Support (activity 177).

91 Included in the above appropriation for the School of
92 Osteopathic Medicine is \$868,000 for Rural Health Initiative
93 Site Support Program (activity 853), and \$536,161 for Primary
94 Health Education Program Support (activity 177).

95 Included in the above appropriation for Southern West
96 Virginia Community and Technical College is \$373,774 for the
97 Marshall University-Southern West Virginia Community and
98 Technical College 2+2 Program (activity 170).

99 The institutions operating from special revenue funds
 100 and/or federal funds shall pay their proportionate share of the
 101 Board of Risk and Insurance Management total insurance
 102 premium cost for their respective institutions.

93—Higher Education Policy Commission—

Health Sciences—

Control Account

(WV Code Chapter 18B)

Fund 0590 FY 2002 Org 0477

1	WVU—School of Health Sciences—			
2	Charleston Division	175	\$	0
3	Primary Health Education			
4	Program Support	177		0
5	Graduate Medical Education	197		0
6	Marshall University -			
7	Center for Rural Health	198		0
8	Medical Education	289		0
9	WVU Charleston Division - Poison Control			
10	Hot Line	510		0
11	Rural Health Initiative Site			
12	Support Program	853		<u>0</u>
13	Total		\$	0

94—Higher Education Policy Commission—

Administration —

Funding Priorities

Control Account

(WV Code Chapter 18B)

Fund 0591 FY 2002 Org 0441

1	Peer Equity and Sustained		
2	Quality Support	489	\$ 7,000,000
3	Independently Accredited Community and		
4	Technical College Development . . .	491	<u>1,000,000</u>
5	Total		\$ 8,000,000

6 The West Virginia Legislature reaffirms its commitment to
7 the spirit, intent, and goals of the Compact with Higher Educa-
8 tion as outlined in Senate Bill 653, as passed during the 2000
9 Regular Session. The Legislature recognizes the continued need
10 to provide improved access to postsecondary education for all
11 of West Virginia’s citizens in order to diversify and expand the
12 economy of the State, and increase the competitiveness of the
13 workforce.

14 The above appropriation shall be allocated only to the
15 State’s post-secondary institutions with compacts approved by
16 the Higher Education Policy Commission, as stated in §18B-
17 1A-5.

95—Claims Against the General Revenue Fund

1	Claims Against the State	319	\$	0
2	Total TITLE II, Section 1—			
3	General Revenue			<u>\$ 2,799,904,183</u>

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

DEPARTMENT OF TRANSPORTATION

96-Division of Motor Vehicles

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

Fund 9007 FY 2002 Org 0802

			State Road Fund
	Activity		
1	Personal Services	001	\$ 11,786,867
2	Annual Increment	004	129,750
3	Employee Benefits	010	4,408,623
4	Unclassified	099	18,122,732
5	International Fuel Tax Agreement	536	<u>560,644</u>
6	Total		\$ 35,008,616

97-Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2002 Org 0803

1	Debt Service	040	\$ 50,000,000
2	Maintenance	237	234,000,000
3	Maintenance, Expressway, Trunkline		
4	and Feeder	270	0
5	Maintenance, Contract Paving and		
6	Secondary Road Maintenance ..	272	50,000,000
7	Bridge Repair and Replacement ...	273	36,000,000
8	Inventory Revolving	275	2,000,000
9	Equipment Revolving	276	15,000,000
10	General Operations	277	49,101,421
11	Interstate Construction	278	70,000,000
12	Other Federal Aid Programs	279	290,700,000
13	Appalachian Programs	280	250,000,000
14	Nonfederal Aid Construction	281	20,000,000
15	Highway Litter Control	282	<u>1,600,000</u>
16	Total		\$ 1,068,401,421

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

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

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

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

98—Division of Highways—

Federal Aid Highway Matching Fund

(WV Code Chapters 17 and 17C)

Fund 9018 FY 2002 Org 0803

1 Any unexpended cash and investment balances remaining
 2 in fund 9018 at the end of fiscal year 2001 shall be transferred
 3 to fund 9399 at the direction of the secretary of transportation.

99—Claims Against the State Road Fund

1	Claims Against the State	319	\$	0
2	Total TITLE II, Section 2—			
3	State Road Fund			<u>\$ 1,103,513,928</u>

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

LEGISLATIVE

100—Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 1731 FY 2002 Org 2300

			Activity	Other Funds
1	Personal Services	001	\$	200,000
2	Annual Increment	004		4,500
3	Employee Benefits	010		59,580
4	Unclassified	099		41,262
5	Economic Loss Claim			
6	Payment Fund (R)	334		<u>1,550,000</u>
7	Total		\$	1,855,342

8 Any unexpended balance remaining in the appropriation for
 9 Economic Loss Claim Payment Fund (fund 1731, activity 334)

10 at the close of the fiscal year 2001 is hereby reappropriated for
11 expenditure during the fiscal year 2002.

EXECUTIVE

101—Chief Technology Officer Administration Fund

(WV Code Chapter 5)

Fund 1028 FY 2002 Org 0100

1	Unclassified	099	\$ 1,861,658
2	EPSCOR Undergraduate Scientific		
3	Instrumentation Program	829	<u>150,000</u>
4	Total		\$ 2,011,658

102—Auditor's Office—

Land Operating Fund

(WV Code Chapters 11A, 12 and 36)

Fund 1206 FY 2002 Org 1200

1	Personal Services	001	\$ 184,629
2	Annual Increment	004	4,400
3	Employee Benefits	010	42,088
4	Unclassified	099	<u>195,416</u>
5	Total		\$ 426,533

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

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

103—Auditor’s Office—

Securities Regulation Fund

(WV Code Chapter 32)

Fund 1225 FY 2002 Org 1200

1	Personal Services	001	\$	709,936
2	Annual Increment	004		4,722
3	Employee Benefits	010		197,693
4	Unclassified	099		<u>515,873</u>
5	Total		\$	1,428,224

104—Auditor’s Office—

Technology Support and Acquisition

(WV Code Chapter 12)

Fund 1233 FY 2002 Org 1200

1	Unclassified—Total	096	\$	573,856
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105—Auditor’s Office—

Purchasing Card Administration Fund

(WV Code Chapter 12)

Fund 1234 FY 2002 Org 1200

1	Unclassified—Total	096	\$	263,604
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106—Auditor’s Office—

Office of the Chief Inspector

(WV Code Chapter 6)

Fund 1235 FY 2002 Org 1200

1	Personal Services	001	\$ 1,445,883
2	Annual Increment	004	22,900
3	Employee Benefits	010	460,950
4	Unclassified	099	<u>430,261</u>
5	Total		\$ 2,359,994

107—Treasurer’s Office—

Technology Support and Acquisition

(WV Code Chapter 12)

Fund 1329 FY 2002 Org 1300

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

Agriculture Fees Fund

(WV Code Chapter 19)

Fund 1401 FY 2002 Org 1400

1	Personal Services	001	\$ 811,568
2	Annual Increment	004	7,268
3	Employee Benefits	010	212,731
4	Unclassified	099	<u>598,094</u>
5	Total		\$ 1,629,661

109—Department of Agriculture—

West Virginia Rural Rehabilitation Program

(WV Code Chapter 19)

Fund 1408 FY 2002 Org 1400

1 Student and Farm Loans—Total 235 \$ 540,596

110—Department of Agriculture—

General John McCausland Memorial Farm

(WV Code Chapter 19)

Fund 1409 FY 2002 Org 1400

1	Personal Services	001	\$	23,708
2	Employee Benefits	010		16,425
3	Unclassified	099		<u>40,000</u>
4	Total		\$	80,133

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

111—Department of Agriculture—

Farm Operating Fund

(WV Code Chapter 19)

Fund 1412 FY 2002 Org 1400

1 Unclassified—Total 096 \$ 1,027,019

112—Attorney General—

Antitrust Enforcement

(WV Code Chapter 47)

Fund 1507 FY 2002 Org 1500

2940	APPROPRIATIONS		[Ch. 1
1	Personal Services	001	\$ 217,110
2	Annual Increment	004	935
3	Employee Benefits	010	66,295
4	Unclassified	099	<u>178,285</u>
5	Total		\$ 462,625

113—Attorney General—

Preneed Funeral Regulation Fund

(WV Code Chapter 47)

Fund 1513 FY 2002 Org 1500

1	Unclassified—Total	096	\$ 224,826
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114—Attorney General—

Preneed Funeral Guarantee Fund

(WV Code Chapter 47)

Fund 1514 FY 2002 Org 1500

1	Unclassified—Total	096	\$ 775,000
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115—Secretary of State—

Trademark Registration

(WV Code Chapters 3, 5, and 59)

Fund 1610 FY 2002 Org 1600

1	Unclassified—Total	096	\$ 7,000
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116—Secretary of State—

Service Fees and Collection Account

(WV Code Chapters 3, 5, and 59)

Fund 1612 FY 2002 Org 1600

1	Personal Services	001	\$ 995,000
2	Annual Increment	004	7,530
3	Employee Benefits	010	312,500
4	Unclassified	099	<u>1,663,500</u>
5	Total		\$ 2,978,530

DEPARTMENT OF ADMINISTRATION*117—Office of the Secretary—**Natural Gas Contract Refund Fund*

(WV Code Chapter 5A)

Fund 2040 FY 2002 Org 0201

1	Unclassified -Total	096	\$ 100,000
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*118—Office of the Secretary—**Tobacco Settlement Fund*

(WV Code Chapter 4)

Fund 2041 FY 2002 Org 0201

1	Tobacco Settlement Fund—Transfer ...	902	\$ 38,000,000
2	From the above appropriation for Tobacco Settlement		
3	Fund—Transfer, \$38,000,000 shall be transferred to the		
4	Division of Health (fund 5124, org 0506) for expenditure.		

*119—Division of Finance—**Public Employees Insurance Reserve Fund*

(WV Code Chapter 5A)

Fund 2207 FY 2002 Org 0209

1 Public Employees Insurance Reserve
 2 Fund—Transfer 903 \$ 5,000,000

3 The above appropriation for Public Employees Insurance
 4 Reserve Fund—Transfer shall be transferred to the Public
 5 Employees Insurance Agency (fund 2180, org 0225) for
 6 expenditure.

120—Division of Information Services and Communications

(WV Code Chapter 5A)

Fund 2220 FY 2002 Org 0210

1	Personal Services	001	\$ 6,040,626
2	Annual Increment	004	83,915
3	Employee Benefits	010	1,768,400
4	Unclassified	099	<u>1,802,464</u>
5	Total		\$ 9,695,405

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

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

16 Each spending unit operating from the general revenue
 17 fund, from special revenue funds or receiving reimbursement

18 for postage from the federal government shall be charged
19 monthly for all postage meter service and shall reimburse the
20 revolving fund monthly for all such amounts.

121—Division of Personnel

(WV Code Chapter 29)

Fund 2440 FY 2002 Org 0222

1	Personal Services	001	\$ 2,488,693
2	Annual Increment	004	48,200
3	Employee Benefits	010	730,372
4	Unclassified	099	<u>734,697</u>
5	Total		\$ 4,001,962

6 Any unexpended balance remaining in the appropriation for
7 Human Resource Information System (fund 2440, activity 641)
8 at the close of the fiscal year 2001 is hereby reappropriated for
9 expenditure during the fiscal year 2002.

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

122—WV Prosecuting Attorneys' Institute

(WV Code Chapter 7)

Fund 2521 FY 2002 Org 0228

1	Unclassified—Total	096	\$ 633,817
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DEPARTMENT OF EDUCATION

123—State Board of Education—

Strategic Staff Development

(WV Code Chapter 18)

Fund 3937 FY 2002 Org 0402

1 Unclassified—Total (R) 096 \$ 500,000

2 Any unexpended balance remaining in the appropriation for
3 Unclassified—Total (fund 3937, activity 096) at the close of the
4 fiscal year 2001 is hereby reappropriated for expenditure during
5 the fiscal year 2002.

124—State Department of Education—

School Building Authority

(WV Code Chapter 18)

Fund 3959 FY 2002 Org 0402

1	Personal Services	001	\$	519,633
2	Annual Increment	004		5,750
3	Employee Benefits	010		181,329
4	Unclassified	099		<u>264,549</u>
5	Total		\$	971,261

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

125—State Department of Education—

FFA-FHA Camp and Conference Center

(WV Code Chapter 18)

Fund 3960 FY 2002 Org 0402

Ch. 1]	APPROPRIATIONS	2945
1	Personal Services	001 \$ 737,016
2	Annual Increment	004 10,250
3	Employee Benefits	010 230,308
4	Unclassified	099 <u>1,043,520</u>
5	Total	\$ 2,021,094

DEPARTMENT OF EDUCATION AND THE ARTS

126—Office of the Secretary—

Lottery Education Fund Interest Earnings—

Control Account

(WV Code Chapter 29)

Fund 3508 FY 2002 Org 0431

1	Unclassified—Total	096 \$ 800,000
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127-Division of Culture and History—

Public Records and Preservation Revenue Fund

(WV Code Chapters 18 and 18B)

Fund 3542 FY 2002 Org 0432

1	Unclassified—Total	096 \$ 22,364
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128—State College and University systems—

State Systems Registration Fee—

Revenue Bond Construction Fund

(WV Code Chapters 18 and 18B)

Fund 4033 FY 2002 Org 0453

1 Any unexpended balance remaining in the appropriations
2 for Capital Outlay (fund 4033, activity 511) at the close of the
3 fiscal year 2001 is hereby reappropriated for expenditure during
4 the fiscal year 2002. The appropriation shall be paid from
5 available unexpended cash balances and interest earnings
6 accruing to the fund. The appropriation shall be expended at the
7 discretion of the Higher Education Policy Commission and the
8 funds may be allocated to any institution within the system.

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

13 Any balances so reappropriated are redesignated into the
14 Higher Education Policy Commission - System (organization
15 0442), 1977 State System Registration Fee Refund Revenue
16 Construction Fund (fund 4905).

129—State College and University Systems—

State Systems Tuition Fee—

Revenue Bond Construction Fund

(WV Code Chapters 18 and 18B)

Fund 4041 FY 2002 Org 0453

1 Any unexpended balance remaining in the appropriation at
2 the close of the fiscal year 2001 is hereby reappropriated for
3 expenditure during the fiscal year 2002. The appropriation shall
4 be paid from available unexpended cash balances and interest
5 earnings accruing to the fund. The appropriation shall be
6 expended at the discretion of the Higher Education Policy
7 Commission and the funds may be allocated to any institution
8 within the system.

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

13 Any balances so reappropriated are redesignated into the
14 Higher Education Policy Commission - System (organization
15 0442), Tuition Fee Revenue Bond Construction Fund (fund
16 4906).

130—State University System—

State System Registration Fee—

Special Capital Improvement Fund

(Capital Improvement and Bond Retirement Fund)

Control Account

(WV Code Chapters 18 and 18B)

Fund 4007 FY 2002 Org 0461

1 Any unexpended balances remaining in the appropriations
2 for (except fiscal year 1999, activities 040, 251, 252, and 438)
3 and (except fiscal year 1996, activity 458) are hereby
4 reappropriated for expenditure during the fiscal year 2002.

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

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

13 Any balances so reappropriated are redesignated into the
14 Higher Education Policy Commission - System (organization
15 0442), Registration Fee Capital Improvement Fund (fund 4902).

131—State University System—

State System Tuition Fee—

Special Capital Improvement Fund

(Capital Improvement and Bond Retirement Fund)

Control Account

(WV Code Chapters 18 and 18B)

Fund 4008 FY 2002 Org 0461

1 Any unexpended balances remaining in the appropriations
2 (except fiscal year 1999, activity 258 and fiscal year 1999,
3 activity 438) are hereby reappropriated for expenditure during
4 the fiscal year 2002.

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

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

13 Any balances so reappropriated are redesignated into the
14 Higher Education Policy Commission - System (organization
15 0442), Tuition Fee Capital Improvement Fund (fund 4903).

132—State College System—

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

(WV Code Chapters 18 and 18B)

Fund 4289 FY 2002 Org 0481

1 Any unexpended balances remaining in the appropriations
2 (except fiscal year 1999, activity 040) are hereby reappropriated
3 for expenditure during the fiscal year 2002.

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

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

12 Any balances so reappropriated are redesignated into the
13 Higher Education Policy Commission - System (organization
14 0442), Registration Fee Capital Improvement Fund (fund 4902).

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

Control Account

(WV Code Chapters 18 and 18B)

Fund 4290 FY 2002 Org 0481

1 Any unexpended balances remaining in the appropriations
2 (except fiscal year 1999, activity 040) are hereby reappropriated
3 for expenditure during the fiscal year 2002.

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

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

11 Any balances so reappropriated are redesignated into the
12 Higher Education Policy Commission - System (organization
13 0442), Tuition Fee Capital Improvement Fund (fund 4903).

134—State University System—

Revenue Bond Construction Fund

(WV Code Chapters 18 and 18B)

Fund 4011 FY 2002 Org 0461

1 Any unexpended balance remaining in the appropriation at
2 the close of the fiscal year 2001 is hereby reappropriated for
3 expenditure during the fiscal year 2002.

4 Any balances so reappropriated are redesignated into the
5 Higher Education Policy Commission - System (organization

6 0442), State University System Revenue Bond Construction
7 Fund (fund 4907).

135—State Board of Rehabilitation—

Division of Rehabilitation Services—

West Virginia Rehabilitation Center—

Special Account

(WV Code Chapter 18)

Fund 8664 FY 2002 Org 0932

1	Unclassified	099	\$ 2,802,182
2	Workshop Development	163	450,000
3	Workshop-Supported Employment	484	<u>50,000</u>
4	Total		\$ 3,302,182

**DEPARTMENT OF HEALTH AND
HUMAN RESOURCES**

136—Board of Barbers and Cosmetologists

(WV Code Chapters 16 and 30)

Fund 5425 FY 2002 Org 0505

1	Personal Services	001	\$ 228,412
2	Annual Increment	004	4,861
3	Employee Benefits	010	78,181
4	Unclassified	099	<u>124,738</u>
5	Total		\$ 436,192

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

137—Division of Health—

Tobacco Settlement Expenditure Fund

(WV Code Chapter 4)

Fund 5124 FY 2002 Org 0506

1	Institutional Facilities Operations (R) ..	335	\$ 32,149,408
2	ABCA Tobacco Retailer Education		
3	Program—Transfer	239	200,000
4	Tobacco Education Program (R)	906	<u>5,650,592</u>
5	Total		\$ 38,000,000

6 Any unexpended balances remaining in the above appropri-
7 ations for Institutional Facilities Operations (fund 5124, activity
8 335) and Tobacco Education Program (fund 5124, activity 906)
9 at the close of the fiscal year 2001 are hereby reappropriated for
10 expenditure during the fiscal year 2002.

11 From the above appropriation for ABCA Tobacco Retailer
12 Education Program —Transfer, \$200,000 shall be transferred
13 to the Alcohol Beverage Control Administration (fund 7352,
14 org 0708) for expenditure.

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

26 Additional funds have been appropriated in fund 0525,
 27 fiscal year 2002, organization 0506, and fund 5156, fiscal year
 28 2002, organization 0506, for the operation of the institutional
 29 facilities. The secretary of the department of health and human
 30 resources is authorized to utilize up to ten percent of the funds
 31 from the Institutional Facilities Operations line item to facilitate
 32 cost effective and cost saving services at the community level.

33 From the above appropriation to Institutional Facilities
 34 Operations, together with available funds from the division of
 35 health—hospital services revenue account (fund 5156, activity
 36 335) and consolidated medical services fund (fund 0525,
 37 activity 335), on July 1, 2001, the sum of one hundred fifty-
 38 thousand dollars shall be transferred to the department of
 39 agriculture—land division as advance payment for the purchase
 40 of food products; actual payments for such purchases shall not
 41 be required until such credits have been completely expended.

138—Division of Health—

Vital Statistics

(WV Code Chapter 16)

Fund 5144 FY 2002 Org 0506

1	Personal Services	001	\$	254,769
2	Annual Increment	004		8,203
3	Employee Benefits	010		112,625
4	Unclassified.	099		<u>99,950</u>
	Total		\$	475,547

139—Division of Health—

Hospital Services Revenue Account

(Special Fund)

(Capital Improvement, Renovation and Operations)

(WV Code Chapter 16)

Fund 5156 FY 2002 Org 0506

1	Debt Service (R)	040	\$ 2,420,000
2	Institutional Facilities Operations (R) ..	335	34,441,768
3	Medical Services Trust Fund—		
4	Transfer (R)	512	<u>23,300,000</u>
5	Total		\$ 60,161,768

6 Any unexpended balances remaining in the appropriations
7 for hospital services revenue account at the close of the fiscal
8 year 2001 are hereby reappropriated for expenditure during the
9 fiscal year 2002, except for fund 5156, activity 040, and activity
10 512 (fiscal year 2000) which shall expire on June 30, 2001.

11 The total amount of this appropriation shall be paid from
12 the hospital services revenue account special fund created by
13 section fifteen-a, article one, chapter sixteen of the code, and
14 shall be used for operating expenses and for improvements in
15 connection with existing facilities and bond payments.

16 The secretary of the department of health and human
17 resources is authorized to utilize up to ten percent of the funds
18 from the appropriation for Institutional Facilities Operations
19 line to facilitate cost effective and cost saving services at the
20 community level.

21 Necessary funds from the above appropriation may be used
22 for medical facilities operations, either in connection with this
23 account or in connection with the line item designated Institu-
24 tional Facilities Operations in the consolidated medical service
25 fund (fund 0525, fiscal year 2002, organization 0506) and the
26 tobacco settlement expenditure fund (fund 5124, fiscal year
27 2002, organization 0506).

28 From the above appropriation to Institutional Facilities
 29 Operations, together with available funds from the consolidated
 30 medical services fund (fund 0525, activity 335) and the tobacco
 31 settlement expenditure fund (fund 5124, activity 335), on July
 32 1, 2001, the sum of one hundred fifty-thousand dollars shall be
 33 transferred to the department of agriculture—land division as
 34 advance payment for the purchase of food products; actual
 35 payments for such purchases shall not be required until such
 36 credits have been completely expended.

140—Division of Health—

Laboratory Services

(WV Code Chapter 16)

Fund 5163 FY 2002 Org 0506

1	Personal Services	001	\$	491,092
2	Annual Increment	004		9,450
3	Employee Benefits	010		181,477
4	Unclassified	099		<u>367,476</u>
5	Total		\$	1,049,495

141—Division of Health—

Health Facility Licensing

(WV Code Chapter 16)

Fund 5172 FY 2002 Org 0506

1	Personal Services	001	\$	198,214
2	Annual Increment	004		2,800
3	Employee Benefits	010		78,645
4	Unclassified	099		<u>89,585</u>
5	Total		\$	369,244

*142—Division of Health—**Hepatitis B Vaccine*

(WV Code Chapter 16)

Fund 5183 FY 2002 Org 0506

1	Personal Services	001	\$	56,071
2	Annual Increment	004		1,150
3	Employee Benefits	010		20,804
4	Unclassified.	099		<u>2,996,821</u>
5	Total		\$	3,074,846

*143—Division of Health—**Lead Abatement Fund*

(WV Code Chapter 16)

Fund 5204 FY 2002 Org 0506

1	Unclassified—Total	096	\$	65,924
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144-WV Board of Medicine

(WV Code Chapter 30)

Fund 5106 FY 2002 Org 0506

1	Unclassified—Total	096	\$	1,059,248
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145—West Virginia Health Care Authority

(WV Code Chapter 16)

Fund 5375 FY 2002 Org 0507

1	Personal Services	001	\$	1,772,454
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2	Annual Increment	004	14,450
3	Employee Benefits	010	517,841
4	Unclassified	099	<u>2,396,405</u>
5	Total		\$ 4,701,150

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

146—Division of Human Services—

Health Care Provider Tax

(WV Code Chapter 11)

Fund 5090 FY 2002 Org 0511

1	Unclassified—Total	096	\$ 148,600,000
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2 From the above appropriation, an amount not to exceed two
3 hundred thousand dollars shall be transferred to a special
4 revenue account in the treasury for use by the department of
5 health and human resources for administrative purposes. The
6 remainder of all moneys deposited in the fund shall be trans-
7 ferred to the West Virginia medical services fund.

147—Division of Human Services—

Child Support Enforcement

(WV Code Chapter 48A)

Fund 5094 FY 2002 Org 0511

1	Unclassified—Total (R)	096	\$ 28,324,780
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2 Any unexpended balance remaining in the appropriation for
 3 Unclassified—Total (fund 5094, activity 096) at the close of the
 4 fiscal year 2001 is hereby reappropriated for expenditure during
 5 fiscal year 2002, except for fund 5094, activity 096 (fiscal year
 6 2000) which shall expire on June 30, 2001.

148—Division of Human Services—

Medical Services Trust Fund

(WV Code Chapter 9)

Fund 5185 FY 2002 Org 0511

1	Eligibility Expansion	582	\$ 5,478,398
2	State Institutions DPSH Payments	583	6,566,355
3	Hospice Services	584	342,975
4	Match Drop	585	10,472,000
5	Payment to Non-State Hospitals DPSH	492	<u>14,557,600</u>
6	Total		\$ 37,417,328

7 The Match Drop line item above shall be used in conjunc-
 8 tion with funds appropriated to the division of human services
 9 in the Medical Services line item (fund 0403, activity 189). The
 10 remainder of all moneys deposited in the fund shall be trans-
 11 ferred to the division of human services accounts.

149—Division of Human Services—

James “Tiger” Morton Catastrophic Illness Fund

(WV Code Chapter 16)

Fund 5454 FY 2002 Org 0511

1	Unclassified—Total	096	\$ 1,250,663
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150—Family Protection Services Board—

Domestic Violence Legal Services Fund

(WV Code Chapter 48)

Fund 5455 FY 2002 Org 0511

1 Unclassified—Total 096 \$ 150,000

**DEPARTMENT OF MILITARY
AFFAIRS AND PUBLIC SAFETY**

151—Department of Military Affairs and Public Safety—

Office of the Secretary—

Law-Enforcement, Safety and

Emergency Worker Funeral

Expense Payment Fund

(WV Code Chapter 15)

Fund 6003 FY 2002 Org 0601

1 Unclassified—Total 096 \$ 16,000

152—State Armory Board—

General Armory Fund

(WV Code Chapter 15)

Fund 6057 FY 2002 Org 0603

1 Unclassified—Total 096 \$ 458,250

153—West Virginia Division of Corrections—

Parolee Supervision Fees

(WV Code Chapter 62)

Fund 6362 FY 2002 Org 0608

1	Personal Services	001	\$	113,807
2	Annual Increment	004		1,466
3	Employee Benefits	010		51,529
4	Unclassified	099		<u>134,989</u>
5	Total		\$	301,791

154—West Virginia Division of Corrections—

WV Community Corrections Fund

(WV Code Chapter 62)

Fund 6386 FY 2002 Org 0608

1	Unclassified-Total	096	\$	300,000
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155—West Virginia State Police—

Motor Vehicle Inspection Fund

(WV Code Chapter 17C)

Fund 6501 FY 2002 Org 0612

1	Personal Services	001	\$	1,106,511
2	Annual Increment	004		3,750
3	Employee Benefits	010		294,672
4	Unclassified	099		527,855
5	BRIM Premium	913		<u>70,259</u>
6	Total		\$	2,003,047

7 The total amount of this appropriation shall be paid from
8 the special revenue fund out of fees collected for inspection
9 stickers as provided by law.

156—West Virginia State Police—

Drunk Driving Prevention Fund

(WV Code Chapter 15)

Fund 6513 FY 2002 Org 0612

1	Unclassified-Total	096	\$	0
2	Unclassified	099		964,119
3	BRIM	913		<u>35,881</u>
4	Total		\$	1,000,000

5 The total amount of this appropriation shall be paid from
6 the special revenue fund out of receipts collected pursuant to
7 sections nine-a and sixteen, article fifteen, chapter eleven of the
8 code and paid into a revolving fund account in the state
9 treasury.

157—West Virginia State Police—

Surplus Real Property Proceeds Fund

(WV Code Chapter 15)

Fund 6516 FY 2002 Org 0612

1	Unclassified-Total	096	\$	0
2	Unclassified	099		482,061
3	BRIM Premium	913		<u>17,939</u>
4	Total		\$	500,000

158—West Virginia State Police—

Surplus Transfer Account

(WV Code Chapter 15)

Fund 6519 FY 2002 Org 0612

1	Unclassified — Total (R)	096	\$	0
2	Unclassified	099		337,441
3	BRIM Premium	913		<u>12,559</u>
4	Total		\$	350,000

5 Any unexpended balance remaining in the appropriation for
6 Unclassified—Total (fund 6519, activity 096) at the close of the
7 fiscal year 2001 is hereby reappropriated for expenditure during
8 the fiscal year 2002.

*159—West Virginia State Police—**Central Abuse Registry Fund*

(WV Code Chapter 15)

Fund 6527 FY 2002 Org 0612

1	Unclassified-Total	096	\$	0
2	Unclassified	099		186,518
3	BRIM Premium	913		<u>4,302</u>
4	Total		\$	190,820

*160—West Virginia State Police—**Bail Bond Enforcer Fund*

(WV Code Chapter 15)

Fund 6532 FY 2002 Org 0612

1	Unclassified—Total	096	\$	20,000
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161—Regional Jail and Correctional Facility Authority

(WV Code Chapter 31)

Fund 6675 FY 2002 Org 0615

1	Personal Services	001	\$	1,195,284
2	Annual Increment	004		9,550
3	Employee Benefits	010		363,343
4	Debt Service	040		9,000,000
5	Unclassified	099		<u>480,369</u>
6	Total		\$	11,048,546

162—Division of Veterans' Affairs—

Veterans' Home

(WV Code Chapter 19A)

Fund 6754 FY 2002 Org 0618

1	Unclassified—Total	096	\$	216,000
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163—Fire Commission—

Fire Marshal Fees

(WV Code Chapter 29)

Fund 6152 FY 2002 Org 0619

1	Personal Services	001	\$	638,121
2	Annual Increment	004		7,200
3	Employee Benefits	010		245,837
4	Unclassified	099		<u>413,707</u>
5	Total		\$	1,304,865

6 Any unexpended cash balance remaining in fund 6152 at
 7 the close of the fiscal year 2001 is hereby available for expendi-
 8 ture as part of the fiscal year 2002 appropriation.

164—Criminal Justice Services—

Court Security Fund

(Executive Order)

Fund 6804 FY 2002 Org 0620

1 Unclassified—Total 096 \$ 1,000,000

DEPARTMENT OF TAX AND REVENUE

165—Division of Banking—

Lending and Credit Rate Board

(WV Code Chapter 47A)

Fund 3040 FY 2002 Org 0303

1	Personal Services	001	\$	5,000
2	Employee Benefits	010		1,002
3	Unclassified	099		<u>5,000</u>
4	Total		\$	11,002

166—Division of Banking

(WV Code Chapter 31A)

Fund 3041 FY 2002 Org 0303

1	Personal Services	001	\$	1,467,131
2	Annual Increment	004		11,350
3	Employee Benefits	010		439,663
4	Unclassified	099		<u>751,232</u>
5	Total		\$	2,669,376

*167—Tax Division—**Cemetery Company Account*

(WV Code Chapter 35)

Fund 7071 FY 2002 Org 0702

1	Personal Services	001	\$	16,872
2	Employee Benefits	010		5,315
3	Unclassified	099		<u>10,269</u>
4	Total		\$	32,456

*168—Tax Division—**Special Audit and Investigative Unit*

(WV Code Chapter 11)

Fund 7073 FY 2002 Org 0702

1	Personal Services	001	\$	767,369
2	Annual Increment	004		14,800
3	Employee Benefits	010		243,674
4	Unclassified	099		<u>326,179</u>
5	Total		\$	1,352,022

*169—Insurance Commissioner—**Examination Revolving Fund*

(WV Code Chapter 33)

Fund 7150 FY 2002 Org 0704

1	Personal Services	001	\$	554,722
2	Annual Increment	004		2,500
3	Employee Benefits	010		139,704
4	Unclassified	099		<u>241,000</u>
5	Total		\$	937,926

170—Insurance Commissioner—

Consumer Advocate

(WV Code Chapter 33)

Fund 7151 FY 2002 Org 0704

1	Personal Services	001	\$	201,616
2	Annual Increment	004		1,250
3	Employee Benefits	010		63,971
4	Unclassified	099		<u>115,908</u>
5	Total		\$	382,745

171—Insurance Commissioner

(WV Code Chapter 33)

Fund 7152 FY 2002 Org 0704

1	Personal Services	001	\$	2,238,919
2	Annual Increment	004		33,950
3	Employee Benefits	010		641,816
4	Unclassified	099		<u>1,458,722</u>
5	Total		\$	4,373,407

6 The total amount of this appropriation shall be paid from a
7 special revenue fund out of collections of fees and charges as
8 provided by law.

172—Racing Commission—

Relief Fund

(WV Code Chapter 19)

Fund 7300 FY 2002 Org 0707

1	Medical Expenses—Total	245	\$	57,000
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2 The total amount of this appropriation shall be paid from
 3 the special revenue fund out of collections of license fees and
 4 fines as provided by law.

5 No expenditures shall be made from this account except for
 6 hospitalization, medical care and/or funeral expenses for
 7 persons contributing to this fund.

173—Racing Commission—

Administration and Promotion

(WV Code Chapter 19)

Fund 7304 FY 2002 Org 0707

1	Personal Services	001	\$	54,836
2	Annual Increment	004		1,000
3	Employee Benefits	010		23,876
4	Unclassified	099		<u>47,358</u>
5	Total		\$	127,070

174—Racing Commission—

General Administration

(WV Code Chapter 19)

Fund 7305 FY 2002 Org 0707

1	Personal Services	001	\$	1,579,617
2	Annual Increment	004		20,250
3	Employee Benefits	010		390,462
4	Unclassified	099		<u>232,448</u>
5	Total		\$	2,222,777

175—Racing Commission—

Administration, Promotion and Education Fund

(WV Code Chapter 19)

Fund 7307 FY 2002 Org 0707

1 Unclassified—Total 096 \$ 35,000

176—Alcohol Beverage Control Administration—

Wine License Special Fund

(WV Code Chapter 60)

Fund 7351 FY 2002 Org 0708

1	Personal Services	001	\$	219,894
2	Annual Increment	004		3,200
3	Employee Benefits	010		78,029
4	Unclassified	099		<u>156,016</u>
5	Total		\$	457,139

177—Alcohol Beverage Control Administration

(WV Code Chapter 60)

Fund 7352 FY 2002 Org 0708

1	Personal Services	001	\$	3,409,802
2	Annual Increment	004		76,000
3	Employee Benefits	010		1,372,691
4	Unclassified (R)	099		<u>2,066,574</u>
5	Total		\$	6,925,067

6 Any unexpended balance remaining in Unclassified (fund
7 7352, activity 099) at the close of the fiscal year 2001 is hereby
8 reappropriated for expenditure during the fiscal year 2002.

9 From the above appropriation an amount of \$500,000 shall
 10 be used for the Tobacco/Alcohol Education Program. To the
 11 extent permitted by law, eight classified exempt positions shall
 12 be provided from Personal Services line item for the educator-
 13 inspector positions to be used in the education and enforcement
 14 activities relating to underage tobacco and alcohol use and
 15 sales.

16 The total amount of this appropriation shall be paid from a
 17 special revenue fund out of liquor revenues.

18 The above appropriation includes the salary of the commis-
 19 sioner and the salaries, expenses and equipment of administra-
 20 tive offices, warehouses and inspectors.

21 There is hereby appropriated from liquor revenues, in
 22 addition to the above appropriation, the necessary amount for
 23 the purchase of liquor as provided by law.

DEPARTMENT OF TRANSPORTATION

178—Division of Motor Vehicles—

Driver's License Reinstatement Fund

(WV Code Chapter 17B)

Fund 8213 FY 2002 Org 0802

1	Personal Services	001	\$	332,374
2	Annual Increment	004		4,650
3	Employee Benefits	010		117,157
4	Unclassified	099		247,865
5	Unclassified—Total	096		<u>0</u>
6	Total		\$	702,046

179—Division of Motor Vehicles—

Driver Rehabilitation

(WV Code Chapter 17C)

Fund 8214 FY 2002 Org 0802

1 Unclassified—Total 096 \$ 178,426

180—Division of Motor Vehicles—

Insurance Certificate Fees

(WV Code Chapter 20)

Fund 8215 FY 2002 Org 0802

1	Personal Services	001	\$	611,152
2	Annual Increment	004		15,700
3	Employee Benefits	010		238,241
4	Unclassified	099		53,879
5	Unclassified - Total	096		<u>0</u>
6	Total		\$	918,972

181—Division of Motor Vehicles—

Motorboat Licenses

(WV Code Chapter 20)

Fund 8216 FY 2002 Org 0802

1 Unclassified—Total 096 \$ 163,936

182—Division of Motor Vehicles—

Returned Check Fees

(WV Code Chapter 17)

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Fund 8217 FY 2002 Org 0802

1 Unclassified—Total 096 \$ 16,000

183—Division of Motor Vehicles—

Dealer Recovery Fund

(WV Code Chapter 17)

Fund 8220 FY 2002 Org 0802

1 Unclassified—Total 096 \$ 200,000

184—Division of Highways—

Tire Remediation/Environmental Clean-Up Fund

(WV Code Chapter 17)

Fund 8319 FY 2002 Org 0803

1 Unclassified—Total 096 \$ 0

185—Division of Highways—

A. James Manchin Fund

(WV Code Chapter 17)

Fund 8319 FY 2002 Org 0803

1 Unclassified—Total 096 \$ 3,625,000

BUREAU OF COMMERCE

186—Division of Forestry

(WV Code Chapter 19)

Fund 3081 FY 2002 Org 0305

1	Personal Services	001	\$	311,481
2	Annual Increment	004		3,450
3	Employee Benefits	010		84,712
4	Unclassified	099		<u>485,103</u>
5	Total		\$	884,746

*187—Division of Forestry—**Timberland Enforcement Operations*

(WV Code Chapter 19)

Fund 3082 FY 2002 Org 0305

1	Unclassified—Total	096	\$	170,000
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*188—Division of Forestry—**Severance Tax Operations*

(WV Code Chapter 11)

Fund 3084 FY 2002 Org 0305

1	Unclassified—Total	096	\$	3,703,168
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189—Geological and Economic Survey

(WV Code Chapter 29)

Fund 3100 FY 2002 Org 0306

1	Personal Services	001	\$	42,192
2	Annual Increment	004		550
3	Employee Benefits	010		7,740
4	Unclassified	099		<u>177,081</u>
5	Total		\$	227,563

6 The above appropriation shall be used in accordance with
7 section four, article two, chapter twenty-nine of the code.

190—West Virginia Development Office—

Energy Assistance

(WV Code Chapter 5B)

Fund 3144 FY 2002 Org 0307

1 Any unexpended balance remaining in the appropriation for
2 Energy Assistance—Total (fund 3144, activity 647) at the close
3 of the fiscal year 2001 is hereby reappropriated for expenditure
4 during the fiscal year 2002.

191—West Virginia Development Office—

Office of Coal Field Community Development

(WV Code Chapter 5B)

Fund 3162 FY 2002 Org 0307

1 Unclassified—Total (R) 096 \$ 300,000

2 Any unexpended balance remaining in the above appropria-
3 tion for Unclassified - Total (fund 3162, activity 096) at the
4 close of the fiscal year 2001 is hereby reappropriated for
5 expenditure during the fiscal year 2002.

192—Division of Labor—

Contractor Licensing Board Fund

(WV Code Chapter 21)

Fund 3187 FY 2002 Org 0308

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1	Personal Services	001	\$	917,553
2	Annual Increment	004		12,208
3	Employee Benefits	010		329,045
4	Unclassified	099		<u>605,951</u>
5	Total		\$	1,864,757

193—Division of Labor—

Elevator Safety Act

(WV Code Chapter 21)

Fund 3188 FY 2002 Org 0308

1	Personal Services	001	\$	158,744
2	Annual Increment	004		1,381
3	Employee Benefits	010		57,463
4	Unclassified	099		<u>93,839</u>
5	Total		\$	311,427

194—Division of Labor—

Crane Operator Certification Fund

(WV Code Chapter 21)

Fund 3191 FY 2002 Org 0308

1	Unclassified—Total	096	\$	60,697
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195—Division of Labor—

Amusement Rides/Amusement Attraction Safety Fund

(WV Code Chapter 21)

Fund 3192 FY 2002 Org 0308

1	Unclassified—Total	096	\$	75,865
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196—Division of Natural Resources

(WV Code Chapter 20)

Fund 3200 FY 2002 Org 0310

1	Personal Services	001	\$ 7,527,825
2	Annual Increment	004	145,462
3	Employee Benefits	010	2,748,387
4	Unclassified	099	2,242,593
5	Capital Improvements and		
6	Land Purchase (R)	248	<u>1,395,225</u>
7	Total		\$ 14,059,492

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

11 Any unexpended balance remaining in the appropriation for
12 Capital Improvements and Land Purchase (fund 3200, activity
13 248) at the close of the fiscal year 2001 is hereby
14 reappropriated for expenditure during the fiscal year 2002.

197—Division of Natural Resources—

Game, Fish and Aquatic Life Fund

(WV Code Chapter 20)

Fund 3202 FY 2002 Org 0310

1	Unclassified—Total	096	\$ 20,000
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198—Division of Natural Resources—

Nongame Fund

(WV Code Chapter 20)

Fund 3203 FY 2002 Org 0310

1	Personal Services	001	\$	204,957
2	Annual Increment	004		5,000
3	Employee Benefits	010		50,328
4	Unclassified	099		<u>17,282</u>
5	Total		\$	277,567

199—Division of Natural Resources—

Planning and Development Division

(WV Code Chapter 20)

Fund 3205 FY 2002 Org 0310

1	Personal Services	001	\$	245,683
2	Annual Increment	004		5,450
3	Employee Benefits	010		83,571
4	Unclassified	099		<u>139,443</u>
5	Total		\$	474,147

200—Division of Natural Resources—

Whitewater Study and Improvement Fund

(WV Code Chapter 20)

Fund 3253 FY 2002 Org 0310

1	Unclassified—Total	096	\$	175,925
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201—Division of Natural Resources—

Recycling Assistance Fund

(WV Code Chapter 20)

Fund 3254 FY 2002 Org 0310

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1	Personal Services	001	\$	167,375
2	Annual Increment	004		2,700
3	Employee Benefits	010		63,793
4	Unclassified (R)	099		<u>1,416,206</u>
5	Total		\$	1,650,074

6 Any unexpended balance remaining in the appropriation for
 7 Unclassified (fund 3254, activity 099) at the close of the fiscal
 8 year 2001 is hereby reappropriated for expenditure during the
 9 fiscal year 2002 with the exception of fund 3254, activity 099
 10 (fiscal year 1997, fiscal year 1998 and fiscal year 1999) which
 11 shall expire on June 30, 2001.

202-Division of Natural Resources—

Whitewater Advertising and Promotion Fund

(WV Code Chapter 20)

Fund 3256 FY 2002 Org 0310

1	Unclassified—Total	096	\$	20,000
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BUREAU OF EMPLOYMENT PROGRAMS

203—Bureau of Employment Programs—

Workers' Compensation Fund

(WV Code Chapter 23)

Fund 3440 FY 2002 Org 0322

1	Personal Services	001	\$	23,414,195
2	Annual Increment	004		379,553
3	Employee Benefits	010		8,200,599
4	Unclassified (R)	099		31,184,316
5	Employer Excess Liability Fund	226		<u>116,256</u>
6	Total		\$	63,294,919

7 Any unexpended balance remaining in the appropriation for
 8 Unclassified (fund 3440, activity 099) at the close of the fiscal
 9 year 2001 is hereby reappropriated for expenditure during the
 10 fiscal year 2002.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

204—Solid Waste Management Board

(WV Code Chapter 20)

Fund 3288 FY 2002 Org 0312

1	Personal Services	001	\$	542,975
2	Annual Increment	004		3,500
3	Employee Benefits	010		163,865
4	Unclassified	099		<u>1,700,589</u>
5	Total		\$	2,410,929

205—Division of Environmental Protection—

Special Reclamation Fund

(WV Code Chapter 22A)

Fund 3321 FY 2002 Org 0313

1	Personal Services	001	\$	280,634
2	Annual Increment	004		7,875
3	Employee Benefits	010		83,312
4	Unclassified	099		<u>7,615,981</u>
5	Total		\$	7,987,802

206—Division of Environmental Protection—

Oil and Gas Reclamation Trust

(WV Code Chapter 22B)

Fund 3322 FY 2002 Org 0313

1	Unclassified—Total	096	\$	465,000
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*207—Division of Environmental Protection—**Oil and Gas Operating Permits*

(WV Code Chapter 22B)

Fund 3323 FY 2002 Org 0313

1	Personal Services	001	\$	217,977
2	Annual Increment	004		3,275
3	Employee Benefits	010		71,738
4	Unclassified	099		<u>467,707</u>
5	Total		\$	760,697

*208—Division of Environmental Protection—**Mining and Reclamation Operations Fund*

(WV Code Chapter 22)

Fund 3324 FY 2002 Org 0313

1	Personal Services	001	\$	2,885,787
2	Annual Increment	004		28,950
3	Employee Benefits	010		913,842
4	Unclassified	099		<u>1,159,302</u>
5	Total		\$	4,987,881

*209—Division of Environmental Protection—**Underground Storage Tanks—**Administrative Fund*

(WV Code Chapter 20)

Fund 3325 FY 2002 Org 0313

1	Personal Services	001	\$	302,071
2	Annual Increment	004		3,225
3	Employee Benefits	010		98,932
4	Unclassified	099		<u>130,370</u>
5	Total		\$	534,598

210—Division of Environmental Protection—

Hazardous Waste Emergency and Response Fund

(WV Code Chapter 20)

Fund 3331 FY 2002 Org 0313

1	Personal Services	001	\$	515,242
2	Annual Increment	004		7,425
3	Employee Benefits	010		152,068
4	Unclassified	099		<u>939,942</u>
5	Total		\$	1,614,677

211—Division of Environmental Protection—

Solid Waste Reclamation and

Environmental Response Fund

(WV Code Chapter 20)

Fund 3332 FY 2002 Org 0313

1	Personal Services	001	\$	165,918
2	Annual Increment	004		2,150
3	Employee Benefits	010		51,725
4	Unclassified	099		<u>690,775</u>
5	Total		\$	910,568

212—Division of Environmental Protection—

Solid Waste Enforcement Fund

(WV Code Chapter 20)

Fund 3333 FY 2002 Org 0313

1	Personal Services	001	\$ 1,509,859
2	Annual Increment	004	28,000
3	Employee Benefits	010	498,736
4	Unclassified	099	<u>642,296</u>
5	Total		\$ 2,678,891

213—Division of Environmental Protection—

Fees and Operating Expenses

(WV Code Chapter 16)

Fund 3336 FY 2002 Org 0313

1	Personal Services	001	\$ 3,768,288
2	Annual Increment	004	27,150
3	Employee Benefits	010	1,183,949
4	Unclassified	099	<u>2,189,607</u>
5	Total		\$ 7,168,994

214—Division of Environmental Protection—

Environmental Laboratory

Certification Fund

(WV Code Chapter 22)

Fund 3340 FY 2002 Org 0313

1	Personal Services	001	\$ 118,051
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2	Annual Increment	004 1,750
3	Employee Benefits	010 42,914
4	Unclassified	099 <u>61,252</u>
5	Total	\$ 223,967

215—Division on Environmental Protection—

Stream Restoration Fund

Fund 3349 FY 2002 Org 0313

1	Unclassified—Total	096 \$ 2,000,000
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216—Division of Environmental Protection—

Mountaintop Removal Fund

(WV Code Chapter 22)

Fund 3490 FY 2002 Org 0313

1	Unclassified—Total	096 \$ 903,544
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217—Oil and Gas Conservation Commission

(WV Code Chapter 22)

Fund 3371 FY 2002 Org 0315

1	Personal Services	001 \$ 153,561
2	Annual Increment	004 1,700
3	Employee Benefits	010 30,450
4	Unclassified	099 <u>47,362</u>
5	Total	\$ 233,073

HIGHER EDUCATION POLICY COMMISSION

218—Health Sciences—

West Virginia University Health Sciences Center

(WV Code Chapters 18 and 18B)

Fund 4179 FY 2002 Org 0463

- 1 Unclassified - Total (R) 096 \$ 15,083,225
- 2 Any unexpended balance remaining in the appropriations
- 3 for the West Virginia University Health Sciences Center is
- 4 hereby reappropriated for expenditure during the fiscal year
- 5 2002.

*219—Higher Education Policy Commission -**System—**Registration Fee Capital Improvement Fund**(Capital Improvement and Bond Retirement Fund)**Control Account*

(WV Code Chapters 18 and 18B)

Fund 4902 FY 2002 Org 0442

1	Debt Service	040	\$ 5,646,425
2	General Capital Expenditures	306	<u>5,361,276</u>
3	Total		\$ 11,007,701

*220—Higher Education Policy Commission—**System—**Tuition Fee Capital Improvement Fund**(Capital Improvement and Bond Retirement Fund)*

Control Account

(WV Code Chapters 18 and 18B)

Fund 4903 FY 2002 Org 0442

1	Debt Service	040	\$ 14,986,909
2	General Capital Expenditures	306	13,635,567
3	Facilities Planning and Administration .	386	<u>382,737</u>
4	Total		\$ 29,005,213

*221—Higher Education Policy Commission-**Marshall University Land Sale Account*

(WV Code Chapters 18B)

Fund 4270 FY 2002 Org 0471

1	Land Sale - Total	493	\$ 600,000
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MISCELLANEOUS BOARDS AND COMMISSIONS*222—Hospital Finance Authority*

(WV Code Chapter 16)

Fund 5475 FY 2002 Org 0509

1	Personal Services	001	\$ 40,270
2	Annual Increment	004	600
3	Employee Benefits	010	14,749
4	Unclassified.	099	<u>94,603</u>
5	Total		\$ 150,222

6 The total amount of this appropriation shall be paid from
7 the special revenue fund out of fees and collections as pro-
8 vided by article twenty-nine-a, chapter sixteen of the code.

223—Municipal Bond Commission

(WV Code Chapter 13)

Fund 7253 FY 2002 Org 0706

1	Personal Services	001	\$	158,046
2	Annual Increment	004		2,700
3	Employee Benefits	010		58,202
4	Unclassified	099		<u>77,990</u>
5	Total		\$	296,938

224—WV State Board of Examiners for Licensed Practical Nurses

(WV Code Chapter 30)

Fund 8517 FY 2002 Org 0906

1	Unclassified—Total	096	\$	344,322
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225—WV Board of Examiners for Registered Professional Nurses

(WV Code Chapter 30)

Fund 8520 FY 2002 Org 0907

1	Unclassified—Total	096	\$	874,601
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226—Public Service Commission

(WV Code Chapter 24)

Fund 8623 FY 2002 Org 0926

1	Personal Services	001	\$	7,744,005
2	Annual Increment	004		120,000
3	Employee Benefits	010		2,284,008
4	Unclassified	099		2,539,737
5	BRIM Premium	913		<u>49,930</u>
6	Total		\$	12,737,680

7 The total amount of this appropriation shall be paid from
 8 a special revenue fund out of collections for special license
 9 fees from public service corporations as provided by law.

10 The Public Service Commission is authorized to spend
 11 up to \$250,000, from surplus funds in this account, to meet
 12 the expected deficiencies in the Motor Carrier Division ac-
 13 count due to passage of enrolled house bill no. 2715, regular
 14 session, 1997.

227—Public Service Commission—

Gas Pipeline Division

(WV Code Chapter 24B)

Fund 8624 FY 2002 Org 0926

1	Personal Services	001	\$	144,022
2	Annual Increment	004		5,556
3	Employee Benefits	010		57,150
4	Unclassified	099		<u>80,078</u>
5	Total		\$	286,806

6 The total amount of this appropriation shall be paid from
 7 a special revenue fund out of receipts collected for or by the
 8 public service commission pursuant to and in the exercise of
 9 regulatory authority over pipeline companies as provided by
 10 law.

228—Public Service Commission—

Motor Carrier Division

(WV Code Chapter 24A)

Fund 8625 FY 2002 Org 0926

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APPROPRIATIONS

2987

1	Personal Services	001	\$ 1,550,755
2	Annual Increment	004	34,723
3	Employee Benefits	010	507,217
4	Unclassified	099	<u>615,301</u>
5	Total		\$ 2,707,996

6 The total amount of this appropriation shall be paid from
7 a special revenue fund out of receipts collected for or by the
8 public service commission pursuant to and in the exercise of
9 regulatory authority over motor carriers as provided by law.

229—Public Service Commission—

Consumer Advocate

(WV Code Chapter 24)

Fund 8627 FY 2002 Org 0926

1	Personal Services	001	\$ 449,949
2	Annual Increment	004	4,800
3	Employee Benefits	010	125,630
4	Unclassified	099	290,860
5	BRIM Premium	913	<u>1,889</u>
6	Total		\$ 873,128

7 The total amount of this appropriation shall be paid from
8 a special revenue fund out of collections made by the public
9 service commission.

230—Real Estate Commission

(WV Code Chapter 47)

Fund 8635 FY 2002 Org 0927

1	Personal Services	001	\$ 336,032
2	Annual Increment	004	4,900

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3	Employee Benefits	010 105,016
4	Unclassified	099 <u>234,335</u>
5	Total	\$ 680,283

6 The total amount of this appropriation shall be paid out
7 of collections of license fees as provided by law.

*231—WV Board of Examiners for Speech-Language Pathology and
Audiology*

(WV Code Chapter 30)

Fund 8646 FY 2002 Org 0930

1	Unclassified—Total	096 \$ 54,003
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232—WV Board of Respiratory Care

(WV Code Chapter 30)

Fund 8676 FY 2002 Org 0935

1	Unclassified—Total	096 \$ 114,163
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233—WV Board of Licensed Dietitians

Fund 8680 FY 2002 Org 0936

1	Unclassified—Total	096 \$ 20,000
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234—Massage Therapy Licensure Board

(WV Code Chapter 30)

Fund 8671 FY 2002 Org 0938

1	Unclassified—Total	096 \$ 41,553
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235-Claims Against Other Funds

1	Claims Against the State	319	\$	0
2	Total TITLE II, Section 3—			
3	Other Funds		\$	<u>646,680,289</u>

4 **Sec. 4. Appropriations from lottery net profits.**—Net
5 profits of the lottery, not to exceed one hundred eighty-six
6 million nine hundred ninety-two thousand four hundred seventy
7 dollars, are to be deposited by the lottery director to the
8 following accounts in the amounts indicated. The lottery
9 director shall prorate each deposit of net profits among fund
10 numbers 2252, 3067, 3267, 3951, 3963, 3508, 3534, 3587,
11 3559, 4925 and 5405 in the proportion the appropriation for
12 each account bears to the total of the appropriations for the
13 eleven accounts.

236-Education, Arts, Sciences and Tourism—

Debt Service Fund

(WV Code Chapter 5)

Fund 2252 FY 2002 Org 0211

				Lottery
				Funds
			Activity	
1	Debt Service—Total	310	\$	10,000,000

237-West Virginia Development Office—

Division of Tourism

(WV Code Chapter 5B)

Fund 3067 FY 2002 Org 0304

1	Tourism—Telemarketing Center	463	\$	100,000
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2	Tourism—Advertising (R)	618	5,000,000
3	State Parks and Recreation		
4	Advertising (R)	619	760,000
5	Tourism—Unclassified (R)	662	3,669,811
6	Tourism-Special Projects	859	<u>3,250,000</u>
7	Total		\$ 12,779,811

8 Any unexpended balances remaining in the appropriations
9 for Tourism—Advertising (fund 3067, activity 618), State
10 Parks and Recreation Advertising (fund 3067, activity 619),
11 Tourism—Unclassified (fund 3067, activity 662) and
12 Tourism—Unclassified—Lottery Surplus (fund 3067, activity
13 773) are hereby reappropriated for expenditure during the fiscal
14 year 2002.

238—Division of Natural Resources

(WV Code Chapter 20)

Fund 3267 FY 2002 Org 0310

1	Unclassified (R)	099	\$ 1,533,132
2	State Recreation Area Improvements ..	307	2,000,000
3	Pricketts Fort State Park	324	120,000
4	Non-Game Wildlife	527	550,000
5	West Virginia Stream Partners Fund ...	637	100,000
6	Canaan Valley—Land Acquisition	710	200,000
7	State Parks - Special Projects (R)	860	1,000,000
8	Computerized Lodging Reservation		
9	System (R)	910	0
10	State Parks Repairs, Renovations,		
11	Maintenance and		
12	Life Safety Repairs (R)	911	<u>1,000,000</u>
13	Total		\$ 6,503,132

14 Any unexpended balances remaining in the appropriations
15 for Parks Operations—Unclassified (fund 3267, activity 645),

16 Capital Outlay—Parks (fund 3267, activity 288), State
 17 Parks—Special Projects (fund 3267, activity 860), State Parks
 18 Repairs, Renovations, Maintenance and Life Safety Repairs
 19 (fund 3267, activity 911), Computerized Lodging Reservation
 20 System (fund 3267, activity 910) and Unclassified (fund 3267,
 21 activity 099) at the close of the fiscal year 2001 are hereby
 22 reappropriated for expenditure during the fiscal year 2002.

239—State Department of Education

(WV Code Chapters 18 and 18A)

Fund 3951 FY 2002 Org 0402

1	Safe Schools	143	\$ 2,000,000
2	Computer Basic Skills (R)	145	7,515,570
3	S.U.C.C.E.S.S (R)	255	8,804,855
4	Technology Repair and		
5	Modernization (R)	298	1,000,000
6	Three Tier Funding	411	1,000,000
7	Technology and Telecommunications		
8	Initiative(R)	596	2,009,213
9	Technology Demonstration Project (R) .	639	150,000
10	Educational Enhancements	695	2,427,000
11	Educational Development (R)	823	1,500,000
12	Vocational Education		
13	Equipment Replacement	393	1,019,750
14	READS Program	365	300,000
15	MATH Program	368	300,000
16	Employment Programs Rate Relief	401	1,288,809
17	Bridges Program	394	300,000
18	Assessment Program	396	3,621,870
19	Teachers' Retirement System	019	<u>1,500,000</u>
20	Total		\$ 34,737,067

21 Any unexpended balances remaining in the appropriation
 22 for Computer Basic Skills (fund 3951, activity 145),

23 S.U.C.C.E.S.S. (fund 3951, activity 255), Technology Repair
 24 and Modernization (fund 3951, activity 298), Computer Basic
 25 Skills—Total (fund 3951, activity 567), Technology and
 26 Telecommunications Initiative (fund 3951, activity 596),
 27 Technology Demonstration Project (fund 3951, activity 639)
 28 and Educational Development (fund 3951, activity 823) at the
 29 close of the fiscal year 2001 are hereby reappropriated for
 30 expenditure during the fiscal year 2002.

240—State Department of Education—

School Building Authority—

Debt Service Fund

(WV Code Chapter 18)

Fund 3963 FY 2002 Org 0402

1	Debt Service—Total	310	\$ 18,000,000
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241—Department of Education and the Arts—

Office of the Secretary—

Control Account—

Lottery Education Fund

(WV Code Chapter 5F)

Fund 3508 FY 2002 Org 0431

1	Unclassified (R)	099	\$ 2,600,000
2	WVU University Affiliated Center		
3	for Developmental Disabilities (R) .	157	100,000
4	WV Humanities Council (R)	168	350,000
5	Commission for National		
6	Community Service (R)	193	160,050

7	Incentives for Recruitment of Teachers		
8	in Subject Areas of Need (R)	241	0
9	Technical Preparation Program (R)	440	904,425
10	Arts Programs (R)	500	40,000
11	WV2001 Project (R)	836	1,500,000
12	Energy Express (R)	861	500,000
13	Challenger Learning Center (R)	862	60,000
14	Jobs for West Virginia Graduates (R)	863	<u>750,000</u>
15	Total		\$ 6,964,475

16 Any unexpended balances remaining in the appropriations
 17 at the close of fiscal year 2001 are hereby reappropriated for
 18 expenditure during the fiscal year 2002.

242—Division of Culture and History—

Lottery Education Fund

(WV Code Chapter 29)

Fund 3534 FY 2002 Org 0432

1	Huntington Symphony	027	\$ 75,000
2	Martin Luther King, Jr. Holiday		
3	Celebration	031	14,550
4	Fairs and Festivals	122	1,900,000
5	Archeological Curation/Capital		
6	Improvements (R)	246	1,000,000
7	Veteran's Memorial - Washington DC	268	216,543
8	Historic Preservation Grants	311	500,000
9	West Virginia Public Theater	312	300,000
10	Tyler County Heritage and		
11	Historical Society	321	0
12	Theater Arts of West Virginia	464	420,000
13	Capital Outlay, Repairs,		
14	and Equipment(R)	589	1,500,000

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15	Grants for Competitive Arts Program ..	624	1,000,000
16	Contemporary American Theater Festival	811	110,000
17	Independence Hall (R)	812	50,000
18	Mountain State Forest Festival	864	75,000
19	George Tyler Moore Center for the		
20	Study of the Civil War	397	70,000
21	Project ACCESS (R)	865	<u>300,000</u>
22	Total		\$ 7,531,093

23 Any unexpended balances remaining in the appropriations
24 for Project ACCESS (fund 3534, activity 865), Archeological
25 Curation/Capital Improvements (fund 3534, activity 246),
26 Independence Hall (fund 3534, activity 812), and Capital
27 Outlay, Repairs and Equipment (fund 3534, activity 589) at the
28 close of the fiscal year 2001 are hereby reappropriated for
29 expenditure during the fiscal year 2002.

243—Library Commission—

Lottery Education Fund

(WV Code Chapter 10)

Fund 3559 FY 2002 Org 0433

1	Grants to Public Libraries	182	\$ 7,198,884
2	Books and Films	179	150,000
3	Services to State Institutions	180	150,000
4	Libraries - Special Projects	625	1,250,000
5	Infomine Network	884	<u>1,003,536</u>
6	Total		\$ 9,752,420

244—Educational Broadcasting Authority—

Lottery Education Fund

(WV Code Chapter 10)

Fund 3587 FY 2002 Org 0439

1	Digital Conversion (R)	247	\$ 2,400,000
2	Mountain Stage	249	<u>200,000</u>
3	Total		\$ 2,600,000

4 Any unexpended balance remaining in the above appropria-
5 tion for Digital Conversion (fund 3587, activity 247) at the
6 close of the fiscal year 2001 is hereby reappropriated for
7 expenditure during the fiscal year 2002.

245—Department of Education and the Arts—

*Board of Trustees of the University System of West Virginia and
Board of Directors of the State College Systems—*

*Central Office—**Control Account—**Lottery Education Fund*

(WV Code Chapters 18B and 18C)

Fund 4057 FY 2002 Org 0452

1 Any unexpended balances remaining in the appropriations
2 at the close of fiscal year 2001 are hereby reappropriated for
3 expenditure during the fiscal year 2002.

4 Any balances so reappropriated are redesignated into the
5 Higher Education Policy Commission Administration (organi-
6 zation 0441), Lottery Education - Higher Education Policy
7 Commission (fund 4925).

246—Bureau of Senior Services

(WV Code Chapter 29)

Fund 5405 FY 2002 Org 0508

1	Local Programs Service Delivery Costs	200	\$ 2,475,250
2	In-Home Services for Senior Citizens . .	224	700,000
3	Nutrition Services for the Elderly	337	700,000
4	Senior Citizen Centers and Programs (R)	462	6,000,000
5	Direct Services	481	2,800,000
6	Transfer to Division of Human Services for		
7	Health Care and Title XIX Waiver for		
8	Senior Citizens	539	13,000,000
9	Senior Services Medicaid Transfer	871	10,300,000
10	Legislative Initiatives for the Elderly . .	904	2,200,000
11	Long Term Care Ombudsmen	905	<u>96,000</u>
12	Total		\$ 38,271,250

13 Any unexpended balances remaining in the appropriations
 14 for Senior Citizens Centers and Programs—Lottery Surplus
 15 (fund 5405, activity 782), Holly Grove Mansion Restoration
 16 (fund 5405, activity 685), Senior Citizens Centers, Maintenance
 17 and Repairs (fund 5405, activity 848) and Senior Citizen
 18 Centers and Programs (fund 5405, activity 462) at the close of
 19 the fiscal year 2001 are hereby reappropriated for expenditure
 20 during the fiscal year 2002.

21 The above appropriation for Health Care and Title XIX
 22 Waiver for Senior Citizens along with the federal monies
 23 generated thereby shall be used for reimbursement for services
 24 provided under the program. Further, the program shall be
 25 preserved within the aggregate of these funds.

247—Higher Education Policy Commission—

Lottery Education—

*Higher Education Policy Commission—**Control Account*

(WV Code Chapters 18B and 18C)

Fund 4925 FY 2002 Org 0441

1	Unclassified	099	\$ 3,562,353
2	Higher Education Grant Program	164	18,000,000
3	Tuition Contract Program	165	749,561
4	Minority Doctoral Fellowship	166	150,000
5	Underwood - Smith Scholarship Program -		
6	Student Awards	167	150,000
7	Health Sciences Scholarship	176	148,500
8	Medical Education	289	0
9	School of Osteopathic Medicine	172	8,349,236
10	School of Osteopathic Medicine BRIM		
11	Subsidy	403	60,277
12	Promise Scholarships	330	0
13	MA Public Health Program and Health Science		
14	Technology	623	75,443
15	HEAPS Grant Program	867	2,000,000
16	Incentives for Institutional Contributions		
17	to State Priorities	404	1,000,000
18	WV Engineering, Science, and Technology		
19	Scholarship Program	868	500,000
20	Health Sciences Career		
21	Opportunities Program	869	75,580
22	Higher Education-Special Projects	488	4,000,000
23	HSTA Program	870	<u>754,379</u>
24	Total		\$ 39,575,329

25 Included in the above appropriation for the Incentives for
26 Institutional Contributions to State Priorities is \$200,000 for
27 increased access to students with disabilities. The remaining

28 appropriation shall be distributed for literacy and graduate
29 initiatives.

1 Total TITLE II, Section 4—
2 Lottery Revenue \$ 186,714,577

1 **Sec. 5. Appropriations from state excess lottery revenue**
2 **fund.**— In accordance with section eighteen-a, article twenty
3 two, chapter twenty nine of the code, the following appropri-
4 ations shall be deposited and disbursed by the lottery director to
5 the following accounts in this section in the amounts indicated.
6 After first satisfying the funding requirements of the general
7 revenue transfer and the transfer to the education improvement
8 fund, the lottery director shall allocate the remaining revenue to
9 the remaining accounts on a pro rata basis.

248—Lottery Commission-

Fund 7205 FY 2002 Org 0705

	Activity	Funds
1	Unclassified—Total-Transfer	402 \$ 49,000,000

2 The above appropriation for Unclassified-Total-Trans-
3 fer(activity 402) shall be transferred to the General Revenue
4 Fund as provided by Chapter 29, Article 22, Section 18a of the
5 Code.

249—Education Improvement Fund-

Fund 4295 FY 2002 Org 0441

1	Unclassified—Total-Transfer	402 \$ 5,500,000
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2 The above appropriation for Unclassified-Total-Transfer
 3 (activity 402) shall be transferred to the PROMISE Scholarship
 4 Fund (fund 4296, org 0441) established by Chapter 18C, Article
 5 7, Section 7.

250-School Building Authority-

Fund 3514 FY 2002 Org 0402

1 Unclassified—Total-Transfer 402 \$ 25,000,000

2 The above appropriation for Unclassified-Total-Transfer
 3 (activity 402) shall be transferred to the School Building Debt
 4 Service Fund (fund 3515, org 0402) established by Chapter 18,
 5 Article 9d, Section 6.

251—West Virginia Infrastructure Council-

Fund 3390 FY 2002 Org 0316

1 Unclassified—Total-Transfer 402 \$ 25,000,000

2 The above appropriation for Unclassified-Total-Trans-
 3 fer(activity 402) shall be transferred to the West Virginia
 4 Infrastructure Fund (fund 3385, org 0316) created by Chapter
 5 31, Article 15A, Section 9 of the Code.

252—Higher Education Improvement Fund-

Fund 4297 FY 2002 Org 0441

1 Unclassified—Total 096 \$ 10,000,000

253—State Park Improvement Fund-

Fund 3277 FY 2002 Org 0310

1 Unclassified—Total 096 \$ 9,000,000

3000

APPROPRIATIONS

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2 Total TITLE II, Section 5—Excess
 3 Lottery Funds \$ 123,500,000

1 **Sec. 6. Appropriations of federal funds.**—In accordance
 2 with article eleven, chapter four of the code, from federal funds
 3 there are hereby appropriated conditionally upon the fulfillment
 4 of the provisions set forth in article two, chapter five-a of the
 5 code the following amounts, as itemized, for expenditure during
 6 the fiscal year two thousand two.

LEGISLATIVE

254—Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 8738 FY 2002 Org 2300

		Activity	Federal Funds
1	Unclassified—Total	096 \$	922,000

EXECUTIVE

255—Governor’s Office—

Governor’s Cabinet on Children and Families

(WV Code Chapter 5)

Fund 8792 FY 2002 Org 0100

1	Unclassified—Total	096 \$	450,000
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256—Governor’s Office—

Office of Economic Opportunity

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APPROPRIATIONS

3001

(WV Code Chapter 5)

Fund 8797 FY 2002 Org 0100

1 Unclassified—Total 096 \$ 4,000,000

257—Governor's Office—

Commission for National and Community Service

(WV Code Chapter 5)

Fund 8800 FY 2002 Org 0100

1 Unclassified—Total 096 \$ 3,502,741

258—Auditor's Office—

National White Collar Crime Center

(WV Code Chapter 12)

Fund 8807 FY 2002 Org 1200

1 Unclassified—Total 096 \$ 9,742,625

259—Department of Agriculture

(WV Code Chapter 19)

Fund 8736 FY 2002 Org 1400

1 Unclassified—Total 096 \$ 2,288,929

260—Department of Agriculture—

Meat Inspection

(WV Code Chapter 19)

3002 APPROPRIATIONS [Ch. 1

Fund 8737 FY 2002 Org 1400

1 Unclassified—Total 096 \$ 800,933

261—Department of Agriculture—

State Soil Conservation Committee

(WV Code Chapter 19)

Fund 8783 FY 2002 Org 1400

1 Unclassified—Total 096 \$ 168,348

DEPARTMENT OF ADMINISTRATION

262—West Virginia Prosecuting Attorney’s Institute

(WV Code Chapter 7)

Fund 8834 FY 2002 Org 0228

1 Unclassified—Total 096 \$ 220,579

263—Children’s Health Insurance Agency

(WV Code Chapter 5)

Fund 8838 FY 2002 Org 0230

1 Unclassified - Total 096 \$ 23,606,744

DEPARTMENT OF EDUCATION

264—State Department of Education

(WV Code Chapters 18 and 18A)

Fund 8712 FY 2002 Org 0402

1 Unclassified—Total 096 \$ 40,013,595

265—State Department of Education—

School Lunch Program

(WV Code Chapters 18 and 18A)

Fund 8713 FY 2002 Org 0402

1 Unclassified—Total 096 \$ 75,008,898

266—State Board of Education—

Vocational Division

(WV Code Chapters 18 and 18A)

Fund 8714 FY 2002 Org 0402

1 Unclassified—Total 096 \$ 24,014,995

267—State Department of Education—

Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Fund 8715 FY 2002 Org 0402

1 Unclassified—Total 096 \$ 46,015,934

DEPARTMENT OF EDUCATION AND THE ARTS

268—Department of Education and the Arts—

Office of the Secretary

(WV Code Chapter 5F)

3004

APPROPRIATIONS

[Ch. 1

Fund 8841 FY 2002 Org 0431

1 Unclassified—Total 096 \$ 791,753

269—Division of Culture and History

(WV Code Chapter 29)

Fund 8718 FY 2002 Org 0432

1 Unclassified—Total 096 \$ 2,474,170

270—Library Commission

(WV Code Chapter 10)

Fund 8720 FY 2002 Org 0433

1 Unclassified—Total 096 \$ 1,925,102

271-Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 8721 FY 2002 Org 0439

1 Unclassified—Total 096 \$ 2,955,000

272—State Board of Rehabilitation—

Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 8734 FY 2002 Org 0932

1 Unclassified—Total 096 \$ 46,323,075

**DEPARTMENT OF HEALTH AND
HUMAN RESOURCES**

273—Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 8723 FY 2002 Org 0506

1 Unclassified—Total 096 \$ 4,805,029

274—Division of Health—

Central Office

(WV Code Chapter 16)

Fund 8802 FY 2002 Org 0506

1 Unclassified—Total 096 \$ 55,825,235

275—Division of Health—

West Virginia Safe Drinking Water Treatment

(WV Code Chapter 16)

Fund 8824 FY 2002 Org 0506

1 Unclassified—Total 096 \$ 16,000,000

276—Human Rights Commission

(WV Code Chapter 5)

Fund 8725 FY 2002 Org 0510

1 Unclassified—Total 096 \$ 503,874

3006

APPROPRIATIONS

[Ch. 1

277—Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 8722 FY 2002 Org 0511

1 Unclassified—Total 096 \$ 1,238,356,012

**DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY**

278—Adjutant General—State Militia

(WV Code Chapter 15)

Fund 8726 FY 2002 Org 0603

1 Unclassified—Total 096 \$ 29,309,869

279—Office of Emergency Services

(WV Code Chapter 15)

Fund 8727 FY 2002 Org 0606

1 Unclassified—Total 096 \$ 2,264,449

280—Division of Corrections

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

Fund 8836 FY 2002 Org 0608

1 Unclassified—Total 096 \$ 50,000

281—West Virginia State Police

(WV Code Chapter 15)

Fund 8741 FY 2002 Org 0612

3008

APPROPRIATIONS

[Ch. 1

286—Division of Motor Vehicles

(WV Code Chapter 17B)

Fund 8787 FY 2002 Org 0802

1 Unclassified—Total 096 \$ 5,970,367

287—Public Port Authority

(WV Code Chapter 17)

Fund 8830 FY 2002 Org 0806

1 Unclassified—Total 096 \$ 1,850,000

288—Aeronautics Commission

(WV Code Chapter 29)

Fund 8831 FY 2002 Org 0807

1 Unclassified—Total 096 \$ 1,450,000

BUREAU OF COMMERCE

289—Division of Forestry

(WV Code Chapter 19)

Fund 8703 FY 2002 Org 0305

1 Unclassified—Total 096 \$ 1,473,137

290—Geological and Economic Survey

(WV Code Chapter 29)

Fund 8704 FY 2002 Org 0306

Ch. 1] APPROPRIATIONS 3009

1 Unclassified—Total 096 \$ 480,296

291—West Virginia Development Office

(WV Code Chapter 5B)

Fund 8705 FY 2002 Org 0307

1 Unclassified—Total 096 \$ 7,304,130

292—Division of Labor

(WV Code Chapters 21 and 47)

Fund 8706 FY 2002 Org 0308

1 Unclassified—Total 096 \$ 514,425

293—Division of Natural Resources

(WV Code Chapter 20)

Fund 8707 FY 2002 Org 0310

1 Unclassified—Total 096 \$ 6,532,966

294—Division of Miners' Health—

Safety and Training

(WV Code Chapter 22)

Fund 8709 FY 2002 Org 0314

1 Unclassified—Total 096 \$ 582,288

DEPARTMENT OF ENVIRONMENT

295—Division of Environmental Protection

(WV Code Chapter 22)

Fund 8708 FY 2002 Org 0313

1 Unclassified—Total 096 \$ 113,144,591

BUREAU OF SENIOR SERVICES

296—Bureau of Senior Services

(WV Code Chapter 29)

Fund 8724 FY 2002 Org 0508

1 Unclassified—Total 096 \$ 13,126,526

BUREAU OF EMPLOYMENT PROGRAMS

297—Bureau of Employment Programs—

(WV Code Chapter 21A)

Fund 8835 FY 2002 Org 0323

1 Unclassified—Total 096 \$ 512,657

2 Pursuant to the requirements of 42 U.S.C. 1103, Section
3 903 of the Social Security Act, as amended, and the provisions
4 of section nine, article nine, chapter twenty-one-a of the code
5 of West Virginia, one thousand nine hundred thirty-one, as
6 amended, the above appropriation to Unclassified shall be used
7 by the bureau of employment programs for the specific purpose
8 of administration of the state’s unemployment insurance
9 program or job service activities, subject to each and every
10 restriction, limitation or obligation imposed on the use of the
11 funds by those federal and state statutes.

MISCELLANEOUS BOARDS AND COMMISSIONS

298—Public Service Commission—

Motor Carrier Division

(WV Code Chapter 24A)

Fund 8743 FY 2002 Org 0926

1 Unclassified—Total 096 \$ 1,472,262

299—Public Service Commission—

Gas Pipeline Division

(WV Code Chapter 24B)

Fund 8744 FY 2002 Org 0926

1 Unclassified—Total 096 \$ 264,391

2 Total TITLE II, Section 6—

3 Federal Funds \$ 1,815,574,168

1 **Sec. 7. Appropriations from federal block grants.**—The
2 following items are hereby appropriated from federal block
3 grants to be available for expenditure during the fiscal year
4 2002.

300—Governor’s Office—

Office of Economic Opportunity

Fund 8799 FY 2002 Org 0100

1 Unclassified—Total 096 \$ 7,151,280

301—West Virginia Development Office—

Community Development

3012

APPROPRIATIONS

[Ch. 1

Fund 8746 FY 2002 Org 0307

1 Unclassified—Total 096 \$ 28,320,538

302—Bureau of Employment Programs—

Job Training Partnership Act

Fund 8749 FY 2002 Org 0323

1 Unclassified—Total 096 \$ 0

303—Bureau of Employment Programs—

Workforce Investment Act

Fund 8842 FY 2002 Org 0323

1 Unclassified—Total 096 \$ 57,657,193

304—State Department of Education—

Education Grant

Fund 8748 FY 2002 Org 0402

1 Unclassified—Total 096 \$ 112,008,657

305—Division of Health—

Maternal and Child Health

Fund 8750 FY 2002 Org 0506

1 Unclassified—Total 096 \$ 8,839,332

306—Division of Health—

Preventive Health

Fund 8753 FY 2002 Org 0506

1 Unclassified—Total 096 \$ 2,228,651

307—Division of Health—

Substance Abuse Prevention and Treatment

Fund 8793 FY 2002 Org 0506

1 Unclassified—Total 096 \$ 11,547,885

308—Division of Health—

Community Mental Health Services

Fund 8794 FY 2002 Org 0506

1 Unclassified—Total 096 \$ 3,305,314

309—Division of Health—

Abstinence Education Program

Fund 8825 FY 2002 Org 0506

1 Unclassified—Total 096 \$ 975,895

310—Division of Human Services—

Energy Assistance

Fund 8755 FY 2002 Org 0511

1 Unclassified—Total 096 \$ 16,049,078

311—Division of Human Services—

Social Services

3014

APPROPRIATIONS

[Ch. 1

Fund 8757 FY 2002 Org 0511

1 Unclassified—Total 096 \$ 14,654,701

312—Division of Human Services—

Temporary Assistance Needy Families

Fund 8816 FY 2002 Org 0511

1 Unclassified—Total 096 \$ 225,153,655

313—Division of Human Services—

Child Care and Development

Fund 8817 FY 2002 Org 0511

1 Unclassified—Total 096 \$ 38,004,871

314—Division of Criminal Justice Services—

Juvenile Accountability Incentive

Fund 8829 FY 2002 Org 0620

1 Unclassified—Total 096 \$ 2,149,049

315—Division of Criminal Justice Services—

Local Law Enforcement

Fund 8833 FY 2002 Org 0620

1 Unclassified—Total 096 \$ 435,151

2 Total TITLE II, Section 7—

3 Federal Block Grants \$ 528,481,250

1 **Sec. 8. Awards for claims against the state.**—There are
2 hereby appropriated for the remainder of the fiscal year 2000-
3 2001 and to remain in effect until June 30,2002, from the fund
4 as designated, in the amounts as specified and for the claimants
5 named in enrolled house bill no. 2817, regular session, 2001,
6 and enrolled senate bill no. 455, regular session, 2001,general
7 revenue funds of \$7,198,113.00 for payment of claims against
8 the state.

9 There are hereby appropriated for the remainder of the
10 fiscal year 2000-2001 and to remain in effect until June 30,
11 2002, from the funds as designated, in the amounts as specified
12 and for the claimants named in enrolled house bill 2817, regular
13 session, 2001, and enrolled senate bill 455, regular session,
14 2001, special revenue funds of \$325,929.42 and state road
15 funds of \$103,890.14 for payment of claims against the state.

1 **Sec. 9. Appropriations from surplus accrued.**—The
2 following items are hereby appropriated from the state fund,
3 general revenue, and are to be available for expenditure during
4 the fiscal year 2002 out of surplus funds only, accrued from the
5 fiscal year ending the thirtieth day of June, two thousand one,
6 subject to the terms and conditions set forth in this section.

7 It is the intent and mandate of the Legislature that the
8 following appropriations be payable only from surplus accrued
9 as of the thirty-first day of July, two thousand one from the
10 fiscal year ending the thirtieth day of June two thousand one.

11 In the event that surplus revenues available on the thirty-
12 first day of July, two thousand one, are not sufficient to meet all
13 the appropriations made pursuant to this section, then the
14 appropriations shall be made to the extent that surplus funds are
15 available as of the date mandated, and shall be allocated first to
16 provide the necessary funds to meet the first appropriation of
17 this section; next, to provide the funds necessary for the second

36 appropriation of this section; and subsequently to provide the
 37 funds necessary for each appropriation in succession before any
 38 funds are provided for the next subsequent appropriation.

316—West Virginia Development Office

(WV Code Chapter 5B)

Fund 0256 FY 2002 Org 0307

1	Sunny Day Fund—Surplus	339	\$	0
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317—West Virginia Development Office

(WV Code Chapter 5B29)

Fund 0256 FY 2002 Org 0307

1	Guaranteed Work Force Grant —			
2	Surplus	496	\$	0

318—Division of Corrections—

Correctional Units

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

Fund 0450 FY 2002 Org 0608

1	Technology Improvements—Surplus . .	725	\$	0
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2 The above appropriation is intended to be expended for a
 3 management information system with emphasis on an auto-
 4 mated inmate management system including but not limited to
 5 housing, tracking, programs, disciplinary action and other
 6 inmate information.

319—Division of General Services

(WV Code Chapter 5A)

Fund 0230 FY 2002 Org 0211

1	Capital Improvements—Capitol Complex—	
2	Surplus 676	\$ <u> 0</u>

3 The above appropriation is intended to be expended for
4 capital improvements to the capitol complex including but not
5 limited to repairs, renovations, capital expenditure and general
6 construction or reconstruction projects.

7	Total TITLE II, Section 9—	
8	Surplus Accrued	\$ <u> 0</u>

1 **Sec. 10. Special revenue appropriations.**—There are
2 hereby appropriated for expenditure during the fiscal year two
3 thousand two appropriations made by general law from special
4 revenue which are not paid into the state fund as general
5 revenue under the provisions of section two, article two, chapter
6 twelve of the code: *Provided*, That none of the money so
7 appropriated by this section shall be available for expenditure
8 except in compliance with and in conformity to the provisions
9 of articles two and three, chapter twelve and article two, chapter
10 five-a of the code, with due consideration to the digest of
11 legislative intent of the budget bill prepared pursuant to article
12 one, chapter four, unless the spending unit has filed with the
13 director of the budget and the legislative auditor prior to the
14 beginning of each fiscal year:

15 (a) An estimate of the amount and sources of all revenues
16 accruing to such fund;

17 (b) A detailed expenditure schedule showing for what
18 purposes the fund is to be expended.

1 **Sec. 11. State improvement fund appropri-**
2 **tions.**—Bequests or donations of nonpublic funds, received by
3 the governor on behalf of the state during the fiscal year two
4 thousand two, for the purpose of making studies and recom-
5 mendations relative to improvements of the administration and
6 management of spending units in the executive branch of state
7 government, shall be deposited in the state treasury in a
8 separate account therein designated state improvement fund.

9 There are hereby appropriated all moneys so deposited
10 during the fiscal year two thousand two to be expended as
11 authorized by the governor, for such studies and recommenda-
12 tions which may encompass any problems of organization,
13 procedures, systems, functions, powers or duties of a state
14 spending unit in the executive branch, or the betterment of the
15 economic, social, educational, health and general welfare of the
16 state or its citizens.

1 **Sec. 12. Specific funds and collection accounts.**—A fund
2 or collection account which by law is dedicated to a specific use
3 is hereby appropriated in sufficient amount to meet all lawful
4 demands upon the fund or collection account and shall be
5 expended according to the provisions of article three, chapter
6 twelve of the code.

1 **Sec. 13. Appropriations for refunding erroneous**
2 **payment.**—Money that has been erroneously paid into the state
3 treasury is hereby appropriated out of the fund into which it was
4 paid, for refund to the proper person.

5 When the officer authorized by law to collect money for the
6 state finds that a sum has been erroneously paid, he or she shall
7 issue his or her requisition upon the auditor for the refunding of
8 the proper amount. The auditor shall issue his or her warrant to
9 the treasurer and the treasurer shall pay the warrant out of the
10 fund into which the amount was originally paid.

1 **Sec. 14. Sinking fund deficiencies.**—There is hereby
2 appropriated to the governor a sufficient amount to meet any
3 deficiencies that may arise in the mortgage finance bond
4 insurance fund of the West Virginia housing development fund
5 which is under the supervision and control of the municipal
6 bond commission as provided by section twenty-b, article
7 eighteen, chapter thirty-one of the code, or in the funds of the
8 municipal bond commission because of the failure of any state
9 agency for either general obligation or revenue bonds or any
10 local taxing district for general obligation bonds to remit funds
11 necessary for the payment of interest and sinking fund require-
12 ments. The governor is authorized to transfer from time to time
13 such amounts to the municipal bond commission as may be
14 necessary for these purposes.

15 The municipal bond commission shall reimburse the state
16 of West Virginia through the governor from the first remittance
17 collected from the West Virginia housing development fund or
18 from any state agency or local taxing district for which the
19 governor advanced funds, with interest at the rate carried by the
20 bonds for security or payment of which the advance was made.

1 **Sec. 15. Appropriations for local governments.**—There
2 are hereby appropriated for payment to counties, districts and
3 municipal corporations such amounts as will be necessary to
4 pay taxes due counties, districts and municipal corporations and
5 which have been paid into the treasury:

- 6 (a) For redemption of lands;
- 7 (b) By public service corporations;
- 8 (c) For tax forfeitures.

1 **Sec. 16. Total appropriations.**—Where only a total sum
2 is appropriated to a spending unit, the total sum shall include

3 personal services, annual increment, employee benefits, current
 4 expenses, repairs and alterations, equipment and capital outlay,
 5 where not otherwise specifically provided and except as
 6 otherwise provided in TITLE I—GENERAL PROVISIONS,
 7 Sec. 3.

1 **Sec. 17. General school fund.**—The balance of the
 2 proceeds of the general school fund remaining after the
 3 payment of the appropriations made by this act is appropriated
 4 for expenditure in accordance with section sixteen, article
 5 nine-a, chapter eighteen of the code.

TITLE III—ADMINISTRATION.

TITLE III—ADMINISTRATION.

§1. Appropriations conditional.

§2. Legislative intent.

1 **Section 1. Appropriations conditional.**—The expenditure
 2 of the appropriations made by this act, except those appropria-
 3 tions made to the legislative and judicial branches of the state
 4 government, are conditioned upon the compliance by the
 5 spending unit with the requirements of article two, chapter
 6 five-a of the code.

7 Where spending units or parts of spending units have been
 8 absorbed by or combined with other spending units, it is the
 9 intent of this act that reappropriations shall be to the succeeding
 10 or later spending unit created, unless otherwise indicated.

1 **Sec. 2. Legislative intent.** It is the intent of the Legislature
 2 that the duly appointed members of the conference committee
 3 on this bill may formulate and set forth in a budget digest
 4 recommendations for the expenditure of money appropriated by
 5 this bill after its enactment. It is the further intent of the
 6 Legislature that the recommendations set forth in the budget
 7 digest are an expression of legislative intent, do not have the
 8 force and effect of law, and may not be construed to alter the
 9 lawful enactment of this bill.

1 **Sec. 3. Constitutionality.**—If any part of this act is
2 declared unconstitutional by a court of competent jurisdiction,
3 its decision shall not affect any portion of this act which
4 remains, but the remaining portion shall be in full force and
5 effect as if the portion declared unconstitutional had never been
6 a part of the act.

CHAPTER 2

(H. B. 103 — By Delegate Michael)

[Passed April 23, 2001; 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 one, in the amount of one million three hundred thousand dollars from the board of risk and insurance management — premium tax savings fund, fund 2367, fiscal year 2001, organization 0218; in the amount of three million dollars from the income tax reserve fund, fund 1313, fiscal year 2001, organization 1300; in the amount of one million dollars from the public service commission, fund 8623, fiscal year 2001, organization 0926; and in the amount of six hundred fifty thousand dollars from the West Virginia health care authority, fund 5375, fiscal year 2001, organization 0507.

WHEREAS, The Legislature finds that the account balances in the board of risk and insurance management — premium tax savings fund, fund 2367, fiscal year 2001, organization 0218; in the income tax reserve fund, fund 1313, fiscal year 2001, organization 1300; in the public service commission, fund 8623, fiscal year 2001, organization 0926; and in the West Virginia health care authority, fund 5375,

fiscal year 2001, organization 0507 exceed that which is necessary for the purposes for which the accounts were established; therefore

Be it enacted by the Legislature of West Virginia:

1 That the amounts of one million three hundred thousand
2 dollars from the board of risk and insurance management —
3 premium tax savings fund, fund 2367, fiscal year 2001,
4 organization 0218; three million dollars from the income tax
5 reserve fund, fund 1313, fiscal year 2001, organization 1300;
6 one million dollars from the public service commission, fund
7 8623, fiscal year 2001, organization 0926; and six hundred fifty
8 thousand dollars from the West Virginia health care authority,
9 fund 5375, fiscal year 2001, organization 0507, be decreased by
10 expiring the above amounts to the unappropriated surplus
11 balance of the state fund, general revenue, to be available for
12 appropriation during the fiscal year ending the thirtieth day of
13 June, two thousand one.

14 The purpose of this bill is to expire the sum of one million
15 three hundred thousand dollars from the board of risk and
16 insurance management — premium tax savings fund, fund
17 2367, fiscal year 2001, organization 0218; three million dollars
18 from the income tax reserve fund, fund 1313, fiscal year 2001,
19 organization 1300; one million dollars from the public service
20 commission, fund 8623, fiscal year 2001, organization 0926;
21 and six hundred fifty thousand dollars from the West Virginia
22 health care authority, fund 5375, fiscal year 2001, organization
23 0507, to the unappropriated surplus balance in the state fund,
24 general revenue, for the fiscal year ending the thirtieth day of
25 June, two thousand one, to be available for appropriation during
26 the fiscal year two thousand one.

CHAPTER 3

(H. B. 104 — By Delegate Michael)

[Passed April 23, 2001; 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 one, in the amount of three million dollars from the joint expenses, fund 0175, fiscal year 1998, organization 2300, activity 642; in the amount of eighteen thousand nine hundred twenty-eight dollars from the joint expenses, fund 0175, fiscal year 1997, organization 2300, activity 377; in the amount of twenty thousand dollars from the joint expenses, fund 0175, fiscal year 1998, organization 2300, activity 377; in the amount of two thousand one hundred ninety-seven dollars and twenty-five cents from the joint expenses, fund 0175, fiscal year 1995, organization 2300, activity 319; in the amount of one hundred eighteen thousand seven hundred ninety-three dollars and twenty cents from the joint expenses, fund 0175, fiscal year 1997, organization 2300, activity 319; in the amount of six hundred thirty-eight dollars and twelve cents from the joint expenses, fund 0175, fiscal year 1998, organization 2300, activity 319; in the amount of one thousand four hundred thirty-three dollars and twenty-five cents from the joint expenses, fund 0175, fiscal year 1999, organization 2300, activity 319; and in the amount of seventy-six thousand two hundred and five dollars from the division of labor, fund 0260, fiscal year 1998, organization 0308, activity 322.

WHEREAS, The Legislature finds that the account balances the joint expenses, fund 0175, fiscal year 1998, organization 2300,

activity 642; the joint expenses, fund 0175, fiscal year 1997, organization 2300, activity 377; the joint expenses, fund 0175, fiscal year 1998, organization 2300, activity 377; the joint expenses, fund 0175, fiscal year 1995, organization 2300, activity 319; the joint expenses, fund 0175, fiscal year 1997, organization 2300, activity 319; the joint expenses, fund 0175, fiscal year 1998, organization 2300, activity 319; the joint expenses, fund 0175, fiscal year 1999, organization 2300, activity 319; and the division of labor, fund 0260, fiscal year 1998, organization 0308, activity 322 exceed that which is necessary for the purposes for which the accounts were established; therefore

Be it enacted by the Legislature of West Virginia:

1 That the amounts of three million dollars from the joint
2 expenses, fund 0175, fiscal year 1998, organization 2300,
3 activity 642; in the amount of eighteen thousand nine hundred
4 twenty-eight dollars from the joint expenses, fund 0175, fiscal
5 year 1997, organization 2300, activity 377; in the amount of
6 twenty thousand dollars from the joint expenses, fund 0175,
7 fiscal year 1998, organization 2300, activity 377; in the amount
8 of two thousand one hundred ninety-seven dollars and twenty-
9 five cents from the joint expenses, fund 0175, fiscal year 1995,
10 organization 2300, activity 319; in the amount of one hundred
11 eighteen thousand seven hundred ninety-three dollars and
12 twenty cents from the joint expenses, fund 0175, fiscal year
13 1997, organization 2300, activity 319; in the amount of six
14 hundred thirty-eight dollars and twelve cents from the joint
15 expenses, fund 0175, fiscal year 1998, organization 2300,
16 activity 319; in the amount of one thousand four hundred thirty
17 three dollars and twenty-five cents from the joint expenses,
18 fund 0175, fiscal year 1999, organization 2300, activity 319 and
19 in the amount of seventy-six thousand two hundred and five
20 dollars from the division of labor, fund 0260, fiscal year 1998,
21 organization 0308, activity 322, be decreased by expiring the
22 above amounts to the unappropriated surplus balance of the
23 state fund, general revenue, to be available for appropriation

24 during the fiscal year ending the thirtieth day of June, two
25 thousand one.

26 The purpose of this bill is to expire the sum of three million
27 dollars from the joint expenses, fund 0175, fiscal year 1998,
28 organization 2300, activity 642; eighteen thousand nine
29 hundred twenty-eight dollars from the joint expenses, fund
30 0175, fiscal year 1997, organization 2300, activity 377; twenty
31 thousand dollars from the joint expenses, fund 0175, fiscal year
32 1998, organization 2300, activity 377; two thousand one
33 hundred ninety-seven dollars and twenty-five cents from the
34 joint expenses, fund 0175, fiscal year 1995, organization 2300,
35 activity 319; one hundred eighteen thousand seven hundred
36 ninety-three dollars and twenty cents from the joint expenses,
37 fund 0175, fiscal year 1997, organization 2300, activity 319; six
38 hundred thirty-eight dollars and twelve cents from the joint
39 expenses, fund 0175, fiscal year 1998, organization 2300,
40 activity 319; one thousand four hundred thirty-three dollars and
41 twenty-five cents from the joint expenses, fund 0175, fiscal
42 year 1999, organization 2300, activity 319; and seventy-six
43 thousand two hundred and five dollars from the division of
44 labor, fund 0260, fiscal year 1998, organization 0308, activity
45 322, to the unappropriated surplus balance in the state fund,
46 general revenue, for the fiscal year ending the thirtieth day of
47 June, two thousand one, to be available for appropriation during
48 the fiscal year two thousand one.

CHAPTER 4

(H. B. 105 — By Delegate Michael)

[Passed April 23, 2001; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated surplus balance in the state fund, general revenue, to the department of military affairs and public safety, division of corrections — correctional units, fund 0450, fiscal year 2001, organization 0608 in the amount of eight million dollars, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

WHEREAS, It appears 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 one; 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 one, to the department of military affairs and public safety, division of corrections — correctional units, fund 0450, fiscal year 2001, organization 0608, be supplemented and amended by increasing the total appropriation by eight million dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 **DEPARTMENT OF MILITARY AFFAIRS**
3 **AND PUBLIC SAFETY**

4 *62—Division of Corrections—*

5 *Correctional Units*

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

7 Fund 0450 FY 2001 Org 0608

8				General
9			Act-	Revenue
10			ivity	Fund
11	7	Huttonsville Correctional		
12	7a	Center - Surplus	285	\$ 355,000
13	15	Ohio County Correctional		
14	15a	Facility - Surplus	323	145,000
15	18a	Payments to Counties and/or		
16	18b	Regional Jails - Surplus	348	5,700,000
17	18c	Inmate Medical Expenses - Surplus	846	1,800,000

18 The purpose of this bill is to supplement the department of
 19 military affairs and public safety, division of corrections -
 20 correctional units, fund 0450, fiscal year 2001, organization
 21 0608, in the budget act for the fiscal year ending the thirtieth
 22 day of June, two thousand one, by adding three hundred fifty-
 23 five thousand dollars to the existing appropriation for
 24 Huttonsville correctional center, one hundred forty-five
 25 thousand dollars to the existing appropriation for Ohio County
 26 correctional facility, five million seven hundred thousand
 27 dollars to a new line item for payments to counties and/or
 28 regional jails, and one million eight hundred thousand dollars
 29 to a new line item for inmate medical expenses for expenditure
 30 during fiscal year two thousand one.

CHAPTER 5

(S. B. 1007 — By Senators Craigo, Plymale and Jackson)

[Passed April 23, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections thirteen, fourteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two and twenty-three, article twenty-three, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to higher education revenue bonds generally; uses for bond proceeds, including motor vehicle parking facilities; removing certain requirement on bond trustee; authorizing gross revenues of facilities to be pledged; and authorizing certain fees to be paid from bond proceeds.

Be it enacted by the Legislature of West Virginia:

That sections thirteen, fourteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two and twenty-three, article twenty-three, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 23. ADDITIONAL POWERS, DUTIES AND RESPONSIBILITIES
OF GOVERNING BOARDS OF STATE INSTITUTIONS
OF HIGHER EDUCATION.**

- §18-23-13. Construction and operation of dormitories, housing facilities, food service facilities and motor vehicle parking facilities for teachers and students.
- §18-23-14. Construction and operation of gymnasiums, etc.
- §18-23-16. Cost of dormitories, housing facilities, food service facilities and motor vehicle parking facilities to be paid from proceeds of revenue bonds.
- §18-23-17. Agreements with trustees for bondholders.
- §18-23-18. Operation and control of fiscal affairs of dormitories, housing facilities, food service facilities and motor vehicle parking facilities.
- §18-23-19. Payment of principal and interest of construction bonds from revenues of dormitories, housing facilities, food service facilities or motor vehicle parking facilities; redemption of bonds.
- §18-23-20. When dormitories, housing facilities, food service facilities or motor vehicle parking facilities become property of state.
- §18-23-21. State debt not to be incurred for dormitories, housing facilities, food service facilities or motor vehicle parking facilities; federal and private assistance; provisions separable.
- §18-23-22. Sections regarded as supplementary.
- §18-23-23. Approval of dormitories, housing facilities, food service facilities or motor vehicle parking facilities.

§18-23-13. Construction and operation of dormitories, housing facilities, food service facilities and motor vehicle parking facilities for teachers and students.

1 The governing boards are hereby authorized to provide,
2 construct, erect, improve, equip, maintain and operate dormito-
3 ries, housing facilities, food service facilities and motor vehicle
4 parking facilities on land owned by the state for students or
5 teachers at the various state institutions of higher education
6 under their control and the cost of construction, erection,
7 improvement or equipment may be payable by means of or with
8 the proceeds of the revenue bonds hereinafter authorized. The
9 governing boards have power and authority to employ engineer-
10 ing, architectural and construction experts and other employees
11 as may be necessary in their judgment and fix their compensa-
12 tion, all of whom shall do the work as the governing boards
13 direct, all of which shall be included as part of the cost of
14 construction and equipment thereof.

§18-23-14. Construction and operation of gymnasiums, etc.

1 The governing boards, within their discretion, are hereby
2 authorized to provide, construct, erect, improve, equip, maintain
3 and operate gymnasiums or stadia for athletic games, contests
4 or exhibitions or physical training, dormitories, housing
5 facilities, food service facilities and motor vehicle parking
6 facilities, swimming pools or such other structures or buildings,
7 for students, teachers, officers and employees at the various
8 state institutions of higher education under their control and
9 management subject to the provisions and limitations of
10 sections thirteen, fifteen, sixteen, seventeen, eighteen, nineteen,
11 twenty, twenty-one, twenty-two, twenty-three and twenty-four
12 of this article.

§18-23-16. Cost of dormitories, housing facilities, food service facilities and motor vehicle parking facilities to be paid from proceeds of revenue bonds.

1 The governing boards may pay the cost, as defined in
2 sections thirteen through twenty-four, inclusive, of this article,
3 of any one or more of the dormitories, housing facilities, food
4 service facilities and motor vehicle parking facilities out of the
5 proceeds of revenue bonds of the state. The governing boards
6 are authorized to issue revenue bonds of the state by a resolu-
7 tion of the board which shall recite an estimate by the board of
8 the cost, the principal and interest of which bonds shall be
9 payable solely from the special fund or funds herein provided
10 for the payment. The board, after any issue of bonds or simulta-
11 neously therewith, may issue further issues of bonds to pay the
12 cost of any other one or more of the dormitories, housing
13 facilities, food service facilities and motor vehicle parking
14 facilities in the manner and subject to all of the provisions
15 herein contained as to the bonds first mentioned in this section.
16 All these bonds shall have and are hereby declared to have all
17 the qualities of negotiable instruments under the Uniform
18 Commercial Code. These bonds shall bear interest at such rates,
19 payable at such times, and shall mature in not more than thirty
20 years from their date or dates and may be made redeemable at
21 the option of the state, to be exercised by the governing boards,
22 at a price and under terms and conditions as they may fix prior
23 to the issuance of the bonds. They shall determine the form of
24 the bonds, which bonds shall be signed by the governor and the
25 president of the appropriate governing board, under the great
26 seal of the state and attested by the secretary of state. In case
27 any of the officers whose signatures appear on the bonds shall
28 cease to be officers before the delivery of the bonds, the
29 signatures shall nevertheless be valid and sufficient for all
30 purposes the same as if they had remained in office until the
31 delivery. The governing boards shall fix the denominations of
32 the bonds, the principal and interest of which shall be payable
33 at the office of the treasurer of the state of West Virginia, at the
34 capitol of the state or, at the option of the holder, at some bank
35 or trust company within or outside of the state, to be named in
36 the bonds, in lawful money of the United States of America.

37 The bonds and the interest thereon shall be exempt from
38 taxation by the state of West Virginia or any county, school
39 district or municipality therein. The governing boards may
40 provide for the registration of the bonds in the name of the
41 owner as to principal alone or as to both principal and interest
42 under the terms and conditions as the governing boards may
43 determine and shall sell the bonds in such manner as they may
44 determine to be for the best interest of the state, taking into
45 consideration the financial responsibility of the purchaser and
46 the terms and conditions of the purchase and especially the
47 availability of the proceeds of the bonds when required for
48 payment of the cost of the dormitories, housing facilities, food
49 service facilities and motor vehicle parking facilities.

50 The proceeds of the bonds shall be used solely for the
51 payment of the cost of the dormitories, housing facilities, food
52 service facilities and motor vehicle parking facilities and costs
53 of issuance of the bonds, which costs shall be deemed to
54 include the cost of site acquisition or construction thereof, the
55 cost of all property, rights, easements and franchises deemed
56 necessary or convenient therefor and for the improvements
57 determined upon as provided in this article; interest upon bonds
58 prior to and during construction or acquisition and for a
59 reasonable period after completion of construction or of
60 acquisition of the improvements; engineering, architectural and
61 legal expenses; expense for estimates of cost and of revenues;
62 expenses for plans, specifications and surveys; other expenses
63 necessary or incidental to determining the feasibility or
64 practicability of the improvements; and other expenses as may
65 be necessary or incidental to the financing herein authorized
66 and the construction or acquisition of the improvements and the
67 placing thereof in operation. The bonds shall be authorized and
68 approved by resolution of the appropriate governing board. If
69 the proceeds of the bonds, by error or otherwise, shall be less
70 than the cost of the dormitories, housing facilities, food service
71 facilities and motor vehicle parking facilities, additional parity

72 bonds may in like manner be issued to provide the amount of
73 the deficit and, unless otherwise provided in the trust agreement
74 hereinafter mentioned, shall be deemed to be of the same issue
75 and shall be entitled to payment from the same fund, without
76 preference or priority of the bonds first issued for the same
77 dormitories, housing facilities, food service facilities and motor
78 vehicle parking facilities. If the proceeds of bonds issued for
79 any dormitories, housing facilities, food service facilities and
80 motor vehicle parking facilities shall exceed the cost thereof,
81 the surplus shall be paid into the fund hereinafter provided for
82 payment of the principal and interest of the bonds. The fund
83 may be used for the purchase of any of the outstanding bonds
84 payable from the fund at the market price, but not exceeding the
85 price, if any, at which the bonds in the same year shall be
86 redeemable and all bonds redeemed or purchased shall forth-
87 with be cancelled and shall not again be issued.

88 Prior to the preparation of definitive bonds, the governing
89 boards may under like restrictions issue temporary bonds ,
90 exchangeable for definitive bonds upon the issuance of the
91 latter. The revenue bonds may be issued without any other
92 proceedings or the happening of any other conditions and things
93 than those proceedings, conditions and things which are
94 specified and required by this article or by the constitution of
95 the state.

§18-23-17. Agreements with trustees for bondholders.

1 The governing boards may enter into an agreement or
2 agreements with any trust company or with any bank having
3 trust powers, either within or outside of the state, as trustee for
4 the holders of the bonds issued hereunder, setting forth therein
5 such duties of the state and of the governing boards in respect
6 of the acquisition, construction, erection, improvement,
7 maintenance, operation, repair and insurance of the dormitories,
8 housing facilities, food service facilities and motor vehicle
9 parking facilities, the conservation and application of all

10 moneys, the insurance of moneys on hand or on deposit and the
11 rights and remedies of the trustee and the holders of the bonds,
12 as may be agreed on with the original purchasers of the bonds,
13 and including therein provisions restricting the individual right
14 of action of bondholders as is customary in trust agreements
15 respecting bonds and debentures of corporations, protecting and
16 enforcing the rights and remedies of the trustee and the bond-
17 holders and providing for approval by the original purchasers
18 of the bonds, of the appointment of consulting engineers and of
19 the security given by those who contract to make improvements
20 and by any bank or trust company in which the proceeds of
21 bonds or rents, fees or charges shall be deposited and for
22 approval by the consulting engineers of all contracts for
23 improvements. All expenses incurred in carrying out an
24 agreement may be treated as a part of the cost of maintenance,
25 operation and repair of the dormitories, housing facilities, food
26 service facilities and motor vehicle parking facilities affected
27 by the agreement. Any agreement entered into by the governing
28 boards shall be binding in all respects on the governing boards
29 from time to time in accordance with its terms and all the
30 provisions thereof shall be enforceable by appropriate proceed-
31 ings at law or in equity, or otherwise.

**§18-23-18. Operation and control of fiscal affairs of dormitories,
housing facilities, food service facilities and motor
vehicle parking facilities.**

1 The governing boards shall properly maintain, repair,
2 operate, manage and control the fiscal affairs of the dormitories,
3 housing facilities, food service facilities and motor vehicle
4 parking facilities, fix the rates of rents, fees or charges and
5 establish rules for the use and operation of such dormitories,
6 housing facilities, food service facilities and motor vehicle
7 parking facilities for the welfare of the students or teachers and
8 may make and enter into all contracts or agreements necessary
9 and incidental to the performance of their duties and the
10 execution of their powers under this article.

§18-23-19. Payment of principal and interest of construction bonds from revenues of dormitories, housing facilities, food service facilities or motor vehicle parking facilities; redemption of bonds.

1 Whenever bonds are issued for the construction, erection or
2 equipment of dormitories, housing facilities, food service
3 facilities or motor vehicle parking facilities or for the improve-
4 ment or equipment of existing dormitories, housing facilities,
5 food service facilities or motor vehicle parking facilities, or for
6 any or all of the purposes, as joint or several projects, for which
7 a single or several issues of bonds may be issued within the
8 discretion of the governing boards, rents, fees and charges shall
9 be fixed, charged and collected in connection with the use or
10 occupancy of, or service to be thereby rendered and furnished
11 by, dormitories, housing facilities, food service facilities or
12 motor vehicle parking facilities of the particular state educa-
13 tional institution as the governing board thereof shall determine,
14 and shall be so fixed or adjusted, as to provide a fund sufficient
15 to pay the principal and interest of each issue of bonds and to
16 provide an additional fund to pay the cost of maintaining,
17 repairing, operating and insuring such dormitories, housing
18 facilities, food service facilities or motor vehicle parking
19 facilities. Whenever bonds are issued to finance the construc-
20 tion and erection of dormitories, housing facilities, food service
21 facilities or motor vehicle parking facilities, together with
22 additions or extensions to existing dormitories, housing
23 facilities, food service facilities and motor vehicle parking
24 facilities for students or teachers at state institutions of higher
25 education, either the combined gross revenues derivable from
26 all the dormitories, housing facilities, food service facilities or
27 motor vehicle parking facilities or the separate gross revenues
28 derivable from the dormitories, the housing facilities, the food
29 service facilities or the motor vehicle parking facilities of the
30 particular state institution of higher education as the governing
31 board thereof shall determine, may be pledged to provide a fund

32 sufficient to pay the principal and interest of the issue of bonds
33 and of any other bonds thereafter issued for the same purpose
34 and to provide an additional fund to pay the cost of maintaining,
35 repairing, operating and insuring such dormitories, housing
36 facilities, food service facilities or motor vehicle parking
37 facilities. Except as may otherwise be provided in the trust
38 agreement authorized in section seventeen of this article, the
39 rents, fees and charges from the dormitories, housing facilities,
40 food service facilities or motor vehicle parking facilities for
41 which a single issue of bonds is issued, in an amount sufficient
42 to pay, when due, the principal of, redemption premium, if any,
43 and interest on such bonds shall be transmitted each month to
44 the municipal bond commission and by it placed in a special
45 fund which is hereby pledged to and charged with the payment
46 of the principal of the bonds and the interest thereon and to the
47 redemption or repurchase of the bonds, the special fund to be a
48 fund for all these bonds without distinction or priority of one
49 over another. The moneys in the special fund, less any reserve
50 for payment of interest, if not used by the municipal bond
51 commission within a reasonable time for the purchase of bonds
52 for cancellation at a price not exceeding the market price and
53 not exceeding the redemption price, shall be applied to the
54 redemption by lot of any bonds which by their terms are then
55 redeemable, at the redemption price then applicable: *Provided,*
56 That if said revenue bonds are sold to and purchased by the
57 United States of America or any federal or public agency or
58 department created under and by virtue of the laws of the
59 United States of America, then at the option of the United
60 States of America or such federal or public agency or depart-
61 ment in lieu of the moneys being transmitted to the municipal
62 bond commission and by it placed in a special fund the rents,
63 fees and charges from the dormitories, housing facilities, food
64 service facilities or motor vehicle parking facilities, in an
65 amount sufficient to pay, when due, the principal of, redemp-
66 tion premium, if any, and interest on the bonds may be trans-
67 mitted and paid to a trustee designated and named by the United

68 States of America or a federal or public agency or department
69 in its agreement and contract with the appropriate governing
70 board, for the payment of the principal of such bonds and the
71 interest thereon, under such terms and conditions as may be
72 agreed upon.

§18-23-20. When dormitories, housing facilities, food service facilities or motor vehicle parking facilities become property of state.

1 When the particular bonds for any dormitory or dormito-
2 ries, housing facilities, food service facilities or motor vehicle
3 parking facilities and the interest on the bonds shall have been
4 paid or a sufficient amount has been provided for their payment
5 and shall continue to be held for that purpose, the dormitories,
6 housing facilities, food service facilities or motor vehicle
7 parking facilities shall thereafter be exclusively the property of
8 the state of West Virginia and thereafter the rents, fees and
9 charges collected for the use or occupancy of, or service
10 rendered and furnished by, the dormitories, housing facilities,
11 food service facilities or motor vehicle parking facilities shall
12 be paid into the state board of investments as provided by the
13 provisions of section two, article two, chapter twelve of this
14 code, as amended, and used and expended for the benefit of the
15 institution where collected: *Provided*, That nothing in this
16 section precludes any governing board from pledging the rents,
17 fees and charges to pay the principal and interest on any bonds
18 thereafter issued to construct new or to improve existing
19 dormitories, housing facilities, food service facilities or motor
20 vehicle parking facilities pursuant to section nineteen of this
21 article. The rents, fees and charges shall be paid as may be
22 provided in a trust agreement authorized pursuant to section
23 seventeen of this article and in the absence of such trust
24 agreement as provided in section nineteen of this article.

§18-23-21. State debt not to be incurred for dormitories, housing facilities, food service facilities or motor vehicle

**parking facilities; federal and private assistance;
provisions separable.**

1 Nothing in these sections dealing with dormitories, housing
2 facilities, food service facilities or motor vehicle parking
3 facilities may be so construed or interpreted as to authorize or
4 permit the incurring of state debt of any kind or nature as
5 contemplated by the constitution of this state in relation to the
6 state debt. The dormitories, housing facilities, food service
7 facilities or motor vehicle parking facilities herein are of the
8 character described as self-liquidating projects under the laws
9 of this state.

10 Any governing board authorized to issue bonds under the
11 provisions of this article is authorized and empowered to accept
12 loans or grants or temporary advances for the purpose of paying
13 part or all of the cost of construction of the dormitories, housing
14 facilities, food service facilities or motor vehicle parking
15 facilities and the other purposes herein authorized, from the
16 United States of America or a federal or public agency or
17 department of the United States or any private agency, corpora-
18 tion or individual, which temporary advances may be repaid out
19 of the proceeds of the bonds authorized to be issued under the
20 provisions of this article and to enter into the necessary con-
21 tracts and agreements to carry out the purposes hereof with the
22 United States of America or a federal or public agency or
23 department of the United States or with any private agency,
24 corporation or individual. The provisions and parts of this
25 section are separable and are not matters of mutual essential
26 inducement and it is the intention to confer the whole or any
27 part of the powers herein provided for and if any of the sections
28 or provisions, or parts thereof, are for any reason illegal or
29 invalid, it is the intention that the remaining sections and
30 provisions or parts thereof shall remain in full force and effect.

§18-23-22. Sections regarded as supplementary.

1 Sections thirteen through twenty-four, inclusive, of this
2 article provide an additional and alternative method for the
3 doing of the things authorized hereby and shall be regarded as
4 supplementary and additional to powers conferred by other
5 laws: *Provided*, That when any revenue bonds are issued
6 hereunder for the purposes provided by sections thirteen
7 through twenty-four, inclusive, of this article, for the benefit of
8 any particular state institution of higher education, no dormito-
9 ries, housing facilities, food service facilities or motor vehicle
10 parking facilities shall thereafter be constructed, built or erected
11 at the state institution of higher education until the appropriate
12 governing board, by investigation had thereon, under the rules
13 as it may prescribe, determines that there is an imperative
14 public need for the construction, building or erection of the
15 dormitories, housing facilities, food service facilities or motor
16 vehicle parking facilities and that their construction, building or
17 erection and subsequent maintenance or operation will not
18 materially injure the revenues of and from any dormitories,
19 housing facilities, food service facilities or motor vehicle
20 parking facilities constructed, built, erected, maintained or
21 operated at the state institution of higher education under the
22 provisions of sections thirteen through twenty-four, inclusive,
23 of this article.

**§18-23-23. Approval of dormitories, housing facilities, food
service facilities or motor vehicle parking facili-
ties.**

1 It is not necessary to secure from any officer or board not
2 named in sections thirteen through twenty-four, inclusive, of
3 this article any approval or consent or any certificate or finding
4 or to hold any election or to take any proceedings whatever,
5 either for the acquisition, construction or erection of such
6 dormitories, housing facilities, food service facilities or motor
7 vehicle parking facilities, or the improvement thereof, or their
8 maintenance, operation, repair or insurance or for the issuance
9 of bonds hereunder, except such as are prescribed in the
10 sections herein named or are required by the constitution of the
11 state.

CHAPTER 6

**(H. B. 102 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed April 21, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-one; to amend and reenact section five, article two, chapter fifteen of said code; to amend and reenact section eight, article nine-d, chapter eighteen of said code; to amend and reenact sections two, two-a, three, eight and eight-a, article four, chapter eighteen-a of said code; to amend and reenact section thirteen-c, article twenty-three, chapter nineteen of said code; to amend and reenact sections five and eighteen, article twenty-two, chapter twenty-nine of said code; to further amend said article by adding thereto a new section, designated section eighteen-a; to amend and reenact sections six and ten, article twenty-two-a of said chapter; to further amend said article by adding thereto two new sections, designated sections ten-b and ten-c; and to amend said chapter by adding thereto a new article, designated article twenty-two-b, all relating generally to lottery games, and providing for the distribution of funds generated therefrom; providing a senior citizen and certain disabled persons tax credit for property tax paid on the first ten thousand dollars of taxable assessed value of a homestead in this state; providing funding from funds generated from lottery games for the cost of the senior citizen and certain disabled persons tax credit and for salary increases for teachers, service personnel, members of the state police, corrections officers and other state employees;

increasing cap on bonds which may be issued by school building authority; authorizing lottery commission to enter into international lottery agreements; expenditure of lottery distributions; providing for administrative costs of state lottery commission; creating state excess lottery revenue fund and providing for distribution and expenditure of the moneys in the fund; expenditure of racetrack video lottery distributions; increasing allowable wager for racetrack video lottery; providing for distribution of amounts exceeding actual administrative costs of state lottery commission; providing for distribution of excess net terminal income; imposition and use of surcharge on excess of total of net terminal income; creating capital reinvestment fund and providing for its expenditure; allowing video lottery games to be played at restricted access adult-only facilities pursuant to licensure by alcohol beverage control commissioner and by lottery commission under regulation of lottery commission; providing short title and statements of legislative purposes, findings and intents; providing definition of words and terms; providing authority of lottery commission and director; prohibiting advertising or promotional activities of limited video lottery; providing requirements, qualification and fees for licensure necessary to participate in limited video lottery activities; providing for lottery commission action on applications for licenses; providing for background investigations of applicants for licenses; providing duties and responsibilities of limited video lottery licensees; providing additional duties of limited video lottery retailers who are permittees; requiring lottery commission approval of video lottery terminals; providing certain hardware and software requirements for video lottery terminals; providing for video lottery terminals to be connected to lottery commission's central computer system; establishing conditions for sale or lease of video lottery terminals; providing for allocation and distribution of video lottery terminals; limiting aggregate number of video lottery terminals that may be located at all licensed restricted access adult-only facilities; limiting number of video lottery

terminals that may be operated by one person; limiting number of video lottery terminals that may be placed on an authorized premises of a limited video lottery retailer; providing for permits to own, lease or operate video lottery terminals; providing for reservation of authority to have video lottery terminals on a premises for certain license applicants; providing for allocation of certain video lottery terminals through competitive bid; providing for reduction of number of video lottery terminals authorized in a license; providing for posting and dissemination of materials providing information relating to problem gambling; providing requirements for operating video lottery terminals; providing for placement and transportation of video lottery terminals; requiring registration decals; providing for maintenance and repair of video lottery terminals; providing for calculation, collection and distribution of gross terminal income generated from video lottery terminals and the state's share of gross terminal income; providing for examination of accounts, statements and records of permittees; providing administrative procedures; providing administrative and judicial remedies; providing administrative and judicial due process; providing certain civil money penalties; providing criminal penalties for certain violations; declaring video gambling machines contraband after specified date; providing for forfeiture, seizure and disposition of contraband; providing for distribution of proceeds of forfeiture; limiting applicability of certain local taxes or regulation on limited video lottery activities regulated by the state; and establishing the timing of implementation of the limited video lottery act provisions.

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 twenty-one; that section five, article two, chapter fifteen of said code be amended and reenacted; that section eight, article nine-d, chapter

eighteen of said code be amended and reenacted; that sections two, two-a, three, eight and eight-a, article four, chapter eighteen-a of said code be amended and reenacted; that section thirteen-c, article twenty-three, chapter nineteen of said code be amended and reenacted; that sections five and eighteen, article twenty-two, chapter twenty-nine of said code be amended and reenacted; that said article twenty-two be further amended by adding thereto a new section, designated section eighteen-a; that sections six and ten, article twenty-two-a, of said chapter be amended and reenacted; that said article twenty-two-a be further amended by adding thereto two new sections, designated sections ten-b and ten-c; and that said chapter twenty-nine be further amended by adding thereto a new article, designated article twenty-two-b, all to read as follows:

Chapter

11. Taxation.

15. Public Safety.

18. Education.

18A. School Personnel.

19. Agriculture.

29. Miscellaneous Boards and Officers.

CHAPTER 11. TAXATION.

PART I. GENERAL.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-21. Senior citizens tax credit for property tax paid on first \$10,000 of taxable assessed value of a homestead in this state.

1 (a) *Allowance of credit.* – A low-income person who is
 2 allowed a twenty thousand dollar homestead exemption from
 3 the assessed value of his or her homestead for ad valorem
 4 property tax purposes as provided in section three, article six-b,
 5 of this chapter, shall be allowed a refundable credit against the
 6 taxes imposed by this article equal to the amount of ad valorem

7 property taxes paid on up to the first ten thousand dollars of
8 taxable assessed value of the homestead for property tax years
9 that begin on or after the first day of January, two thousand two.

10 (b) *Terms defined.* – For purposes of this section:

11 (1) “Low income” means federal adjusted gross income for
12 the taxable year that is one hundred fifty percent or less of the
13 federal poverty guideline for the year in which property tax was
14 paid, based upon the number of individuals in the family unit
15 residing in the homestead, as determined annually by the United
16 States Secretary of Health and Human Services.

17 (2) “Taxes paid” means the aggregate of regular levies,
18 excess levies and bond levies extended against not more than
19 ten thousand dollars of the taxable assessed value of a home-
20 stead that are paid during the calendar year, determined after
21 application of any discount for early payment of taxes but
22 before application of any penalty or interest for late payment of
23 property taxes for a property tax year that begins on or after the
24 first day of January, two thousand two.

25 (c) *Legislative rule.* – The tax commissioner shall propose
26 a legislative rule for promulgation as provided in article three,
27 chapter twenty-nine-a of this code to explain and implement
28 this section.

29 (d) *Confidentiality.* – The tax commissioner shall utilize
30 property tax information in the statewide electronic data
31 processing system network to the extent necessary for the
32 purpose of administering this section, notwithstanding any
33 provision of this code to the contrary.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.**§15-2-5. Career progression system; salaries; exclusion from wage and hour law, with supplemental payment; bond; leave time for members called to duty in guard or reserves.**

1 (a) The superintendent shall establish within the West
2 Virginia state police a system to provide for: The promotion of
3 members to the supervisory ranks of sergeant, first sergeant,
4 second lieutenant and first lieutenant; the classification of
5 nonsupervisory members within the field operations force to the
6 ranks of trooper, senior trooper, trooper first class or corporal;
7 the classification of members assigned to the forensic labora-
8 tory as criminalist I-VII; and the temporary reclassification of
9 members assigned to administrative duties as administrative
10 support specialist I-VIII.

11 (b) The superintendent is authorized to propose legislative
12 rules for promulgation in accordance with article three, chapter
13 twenty-nine-a of this code for the purpose of ensuring consis-
14 tency, predictability and independent review of any system
15 developed under the provisions of this section.

16 (c) The superintendent shall provide to each member a
17 written manual governing any system established under the
18 provisions of this section and specific procedures shall be
19 identified for the evaluation and testing of members for
20 promotion or reclassification and the subsequent placement of
21 any members on a promotional eligibility or reclassification
22 recommendation list.

23 (d) Beginning on the first day of July, two thousand one,
24 and continuing thereafter, members shall receive annual salaries
25 as follows:

26 ANNUAL SALARY SCHEDULE (BASE PAY)
 27 SUPERVISORY AND NONSUPERVISORY RANKS

28	Cadet During Training	\$2,039 Mo.	\$24,476
29	Cadet Trooper After Training	2,442 Mo.	29,312
30	Trooper Second Year		29,768
31	Trooper Third Year		30,140
32	Trooper Fourth & Fifth Year		30,440
33	Senior Trooper		32,528
34	Trooper First Class		34,616
35	Corporal		36,704
36	Sergeant		40,880
37	First Sergeant		42,968
38	Second Lieutenant		45,056
39	First Lieutenant		47,144
40	Captain		49,232
41	Major		51,320
42	Lieutenant Colonel		53,408

43 ANNUAL SALARY SCHEDULE (BASE PAY)

44 ADMINISTRATION

45 SUPPORT SPECIALIST CLASSIFICATION

46	I		30,440
47	II		32,528
48	III		34,616
49	IV		36,704
50	V		40,880
51	VI		42,968
52	VII		45,056
53	VIII		47,144

54 ANNUAL SALARY SCHEDULE (BASE PAY)

55 CRIMINALIST CLASSIFICATION

56	I		30,440
57	II		32,528

58	III	34,616
59	IV	36,704
60	V	40,880
61	VI	42,968
62	VII	45,056

63 Each member of the West Virginia state police whose
64 salary is fixed and specified in this annual salary schedule is
65 entitled to the length of service increases set forth in subsection
66 (f) of this section and supplemental pay as provided in subsec-
67 tion (g) of this section.

68 (e) Each member of the West Virginia state police whose
69 salary is fixed and specified pursuant to this section shall
70 receive, and is entitled to, an increase in salary over that set
71 forth in subsection (d) of this section, for grade in rank, based
72 on length of service, including that service served before and
73 after the effective date of this section with the West Virginia
74 state police as follows: At the end of five years of service with
75 the West Virginia state police, the member shall receive a
76 salary increase of six hundred dollars to be effective during his
77 or her next three years of service and a like increase at
78 three-year intervals thereafter, with the increases to be cumula-
79 tive.

80 (f) In applying the salary schedules set forth in this section
81 where salary increases are provided for length of service,
82 members of the West Virginia state police in service at the time
83 the schedules become effective shall be given credit for prior
84 service and shall be paid such salaries as the same length of
85 service entitles them to receive under the provisions of this
86 section.

87 (g) The Legislature finds and declares that because of the
88 unique duties of members of the West Virginia state police, it
89 is not appropriate to apply the provisions of state wage and hour

90 laws to them. Accordingly, members of the West Virginia state
91 police are excluded from the provisions of state wage and hour
92 law. This express exclusion shall not be construed as any
93 indication that the members were or were not covered by the
94 wage and hour law prior to this exclusion.

95 In lieu of any overtime pay they might otherwise have
96 received under the wage and hour law, and in addition to their
97 salaries and increases for length of service, members who have
98 completed basic training and who are exempt from federal Fair
99 Labor Standards Act guidelines may receive supplemental pay
100 as provided in this section.

101 The superintendent shall, within thirty days after the
102 effective date of this section, propose a legislative rule for
103 promulgation in accordance with article three, chapter
104 twenty-nine-a of this code, to establish the number of hours per
105 month which constitute the standard work month for the
106 members of the West Virginia state police. The rule shall
107 further establish, on a graduated hourly basis, the criteria for
108 receipt of a portion or all of supplemental payment when hours
109 are worked in excess of the standard work month. The superin-
110 tendent shall certify monthly to the West Virginia state police's
111 payroll officer the names of those members who have worked
112 in excess of the standard work month and the amount of their
113 entitlement to supplemental payment. The supplemental
114 payment may not exceed two hundred thirty-six dollars
115 monthly. The superintendent and civilian employees of the
116 West Virginia state police are not eligible for any supplemental
117 payments.

118 (h) Each member of the West Virginia state police, except
119 the superintendent and civilian employees, shall execute, before
120 entering upon the discharge of his or her duties, a bond with
121 security in the sum of five thousand dollars payable to the state
122 of West Virginia, conditioned upon the faithful performance of

123 his or her duties, and the bond shall be approved as to form by
124 the attorney general and as to sufficiency by the governor.

125 (i) Any member of the West Virginia state police who is
126 called to perform active duty for training or inactive duty
127 training in the national guard or any reserve component of the
128 armed forces of the United States annually shall be granted,
129 upon request, leave time not to exceed thirty calendar days for
130 the purpose of performing the active duty for training or
131 inactive duty training and the time granted may not be deducted
132 from any leave accumulated as a member of the West Virginia
133 state police.

CHAPTER 18. EDUCATION.

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-8. Use of proceeds of bonds; bonds exempt from taxation.

1 (a) The maximum aggregate face value of bonds that may
2 be issued by the authority, for which the moneys in the school
3 building debt service fund are to be pledged, is four hundred
4 million dollars. The issuance of revenue bonds under the
5 provisions of this article shall be authorized from time to time
6 by resolution or resolutions of the school building authority,
7 which shall set forth the proposed projects and provide for the
8 issuance of bonds in amounts sufficient, when sold as hereinaf-
9 ter provided, to provide moneys considered sufficient by the
10 authority to pay the costs, less the amounts of any other funds
11 available for the costs or from any appropriation, grant or gift
12 for the costs: *Provided*, That bond issues from which bond
13 revenues are to be distributed in accordance with section fifteen
14 of this article shall not be required to set forth the proposed
15 projects in the resolution. The resolution shall prescribe the
16 rights and duties of the bondholders and the school building
17 authority, and for that purpose may prescribe the form of the
18 trust agreement hereinafter referred to. The bonds may be

19 issued from time to time, in such amounts; shall be of such
20 series; bear such date or dates; mature at such time or times not
21 exceeding forty years from their respective dates; bear interest
22 at such rate or rates; be in such denominations; be in such form,
23 either coupon or registered, carrying such registration,
24 exchangeability and interchangeability privileges; be payable
25 in such medium of payment and at such place or places within
26 or without the state; be subject to such terms of redemption at
27 such prices not exceeding one hundred five percent of the
28 principal amount of the bonds; and be entitled to such priorities
29 on the revenues paid into the fund pledged for repayment of the
30 bonds as may be provided in the resolution authorizing the
31 issuance of the bonds or in any trust agreement made in
32 connection with the bonds: *Provided, however,* That revenue
33 bonds issued on or after the first day of January, one thousand
34 nine hundred ninety-four, which are secured by lottery proceeds
35 shall mature at such time or times not exceeding ten years from
36 their respective dates.

37 (b) The bonds shall be signed by the governor, and by the
38 president or vice president of the authority, under the great seal
39 of the state, attested by the secretary of state, and the coupons
40 attached to the bonds shall bear the facsimile signature of the
41 president or vice president of the authority. In case any of the
42 officers whose signatures appear on the bonds or coupons cease
43 to be officers before the delivery of the bonds, the signatures
44 shall nevertheless be valid and sufficient for all purposes the
45 same as if such officers had remained in office until such
46 delivery. The revenue bonds shall be sold in the manner
47 determined by the authority to be for the best interests of the
48 state.

49 (c) Any pledge of revenues made by the school building
50 authority for revenue bonds issued prior to the twentieth day of
51 July, one thousand nine hundred ninety-three, pursuant to this
52 article is valid and binding between the parties from the time
53 the pledge is made; and the revenues pledged shall immediately

54 be subject to the lien of the pledge without any further physical
55 delivery thereof or further act. The lien of the pledge is valid
56 and binding against all parties having claims of any kind in tort,
57 contract or otherwise, irrespective of whether the parties have
58 notice of the lien of the pledge, and the pledge shall be a prior
59 and superior charge over any other use of the revenues pledged.

60 (d) The proceeds of any bonds shall be used solely for the
61 purpose or purposes as may be generally or specifically set
62 forth in the resolution authorizing those bonds and shall be
63 disbursed in the manner and with the restrictions, if any, that
64 the authority provides in the resolution authorizing the issuance
65 of the bonds or in the trust agreement hereinafter referred to
66 securing the same. If the proceeds of the bonds, by error in
67 calculations or otherwise, are less than the cost of any projects
68 specifically set forth in the resolution, additional bonds may in
69 like manner be issued to provide the amount of the deficiency;
70 and unless otherwise provided for in the resolution or trust
71 agreement hereinafter mentioned, the additional bonds shall be
72 considered to be of the same issue, and are entitled to payment
73 from the same fund, without preference or priority, as the bonds
74 before issued for the projects. If the proceeds of bonds issued
75 for the projects specifically set forth in the resolution authoriz-
76 ing the bonds issued by the authority exceed the cost of the
77 bonds, the surplus may be used for any other projects deter-
78 mined by the school building authority or in any other manner
79 that the resolution authorizing the bonds provides. Prior to the
80 preparation of definitive bonds, the authority may, under like
81 restrictions, issue temporary bonds with or without coupons,
82 exchangeable for definitive bonds upon the issuance of the
83 definitive bonds.

84 (e) After the issuance of any of revenue bonds, the revenues
85 pledged for the revenue bonds shall not be reduced as long as
86 any of the revenue bonds are outstanding and unpaid except
87 under the terms, provisions and conditions that are contained in

88 the resolution, trust agreement or other proceedings under
89 which the revenue bonds were issued.

90 (f) The revenue bonds and the revenue refunding bonds,
91 and bonds issued for combined purposes shall, together with the
92 interest on the bonds, are exempt from all taxation by the state
93 of West Virginia, or by any county, school district, municipality
94 or political subdivision thereof.

95 (g) To meet the operational costs of the school building
96 authority, the school building authority may transfer to a special
97 revenue account in the state treasury interest on any debt
98 service reserve funds created within any resolution authorizing
99 the issue of bonds or any trust agreement made in connection
100 with the bonds, for expenditure in accordance with legislative
101 appropriation or allocation of appropriation.

102 (h) Any school construction bonds issued under this section
103 shall be issued on parity with any existing school building
104 authority bonds previously issued under this article.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-2. State minimum salaries for teachers.

§18A-4-2a. State minimum salary bonus for classroom teachers with national board certification.

§18A-4-3. State minimum annual salary increments for principals and assistant principals.

§18A-4-8. Employment term and class titles of service personnel; definitions.

§18A-4-8a. Service personnel minimum monthly salaries.

§18A-4-2. State minimum salaries for teachers.

1 (a) Each teacher shall receive the amount prescribed in the
2 "state minimum salary schedule I" as set forth in this section,
3 specific additional amounts prescribed in this section or article,
4 and any county supplement in effect in a county pursuant to

5 section five-a of this article during the contract year: *Provided,*
 6 That beginning on the first day of the second quarter of the
 7 teacher’s employment term in the school year two thousand
 8 one-two thousand two, and thereafter, each teacher shall receive
 9 the amount prescribed in “state minimum salary schedule II” as
 10 set forth in this section, specific additional amounts prescribed
 11 in this section or article, and any county supplement in effect in
 12 a county pursuant to section five-a of this article during the
 13 contract year.

1 **STATE MINIMUM SALARY SCHEDULE I**

2	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
3	Years	4th	3rd	2nd	A.B.	A.B.	M.A.	M.A.	M.A.	M.A.	Doc-
4	Exp.	Class	Class	Class	A.B.	+15	M.A.	+15	+30	+45	torate
5	0	20,084	20,721	20,976	22,186	22,921	24,629	25,364	26,099	26,834	27,834
6	1	20,365	21,002	21,257	22,651	23,386	25,094	25,829	26,564	27,299	28,299
7	2	20,646	21,284	21,539	23,116	23,851	25,559	26,294	27,029	27,764	28,764
8	3	20,928	21,565	21,820	23,581	24,316	26,024	26,759	27,494	28,229	29,229
9	4	21,445	22,082	22,338	24,282	25,017	26,725	27,460	28,195	28,930	29,930
10	5	21,726	22,364	22,619	24,747	25,482	27,190	27,925	28,660	29,395	30,395
11	6	22,008	22,645	22,900	25,212	25,947	27,655	28,390	29,125	29,860	30,860
12	7		22,926	23,182	25,677	26,412	28,120	28,855	29,590	30,325	31,325
13	8		23,208	23,463	26,142	26,877	28,585	29,320	30,055	30,790	31,790
14	9			23,744	26,607	27,342	29,050	29,785	30,520	31,255	32,255
15	10			24,025	27,073	27,808	29,516	30,251	30,986	31,721	32,721
16	11				27,538	28,273	29,981	30,716	31,451	32,186	33,186
17	12				28,003	28,738	30,446	31,181	31,916	32,651	33,651
18	13				28,468	29,203	30,911	31,646	32,381	33,116	34,116
19	14						31,376	32,111	32,846	33,581	34,581
20	15						31,841	32,576	33,311	34,046	35,046
21	16						32,306	33,041	33,776	34,511	35,511
22	17							34,241	34,976	35,976	
23	18							34,706	35,441	36,441	
24	19							35,171	35,906	36,906	

25

STATE MINIMUM SALARY SCHEDULE II

26	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
27	Years	4 th	3 rd	2 nd	A.B.	A.B.	M.A.	M.A.	M.A.	M.A.	Doc-
28	Exp.	Class	Class	Class	A.B.	+15	M.A.	+15	+30	+45	torate
29	0	21,084	21,721	21,976	23,186	23,921	25,629	26,364	27,099	27,834	28,834
30	1	21,365	22,002	22,257	23,651	24,386	26,094	26,829	27,564	28,299	29,299
31	2	21,646	22,284	22,539	24,116	24,851	26,559	27,294	28,029	28,764	29,764
32	3	21,928	22,565	22,820	24,581	25,316	27,024	27,759	28,494	29,229	30,229
33	4	22,445	23,082	23,338	25,282	26,017	27,725	28,460	29,195	29,930	30,930
34	5	22,726	23,364	23,619	25,747	26,482	28,190	28,925	29,660	30,395	31,395
35	6	23,008	23,645	23,900	26,212	26,947	28,655	29,390	30,125	30,860	31,860
36	7		23,926	24,182	26,677	27,412	29,120	29,855	30,590	31,325	32,325
37	8		24,208	24,463	27,142	27,877	29,585	30,320	31,055	31,790	32,790
38	9			24,744	27,607	28,342	30,050	30,785	31,520	32,255	33,255
39	10			25,025	28,073	28,808	30,516	31,251	31,986	32,721	33,721
40	11				28,538	29,273	30,981	31,716	32,451	33,186	34,186
41	12				29,003	29,738	31,446	32,181	32,916	33,651	34,651
42	13				29,468	30,203	31,911	32,646	33,381	34,116	35,116
43	14						32,376	33,111	33,846	34,581	35,581
44	15						32,841	33,576	34,311	35,046	36,046
45	16						33,306	34,041	34,776	35,511	36,511
46	17								35,241	35,976	36,976
47	18								35,706	36,441	37,441
48	19								36,171	36,906	37,906

49 (b) Six hundred dollars shall be paid annually to each
50 classroom teacher who has at least twenty years of teaching
51 experience. The payments: (i) Shall be in addition to any
52 amounts prescribed in the applicable state minimum salary
53 schedule; (ii) shall be paid in equal monthly installments; and
54 (iii) shall be considered a part of the state minimum salaries for
55 teachers.

56 (c) Effective the first day of July, two thousand one, in
57 addition to any amounts prescribed in the applicable state

58 minimum salary schedule, each professional educator shall be
 59 paid annually the following incremental increases in accordance
 60 with their years of experience. The payments shall be paid in
 61 equal monthly installments and shall be considered a part of the
 62 state minimum salaries for teachers.

63	Years of Experience	Increment
64	31	534
65	32	534
66	33	534
67	34	534
68	35	534

**§18A-4-2a. State minimum salary bonus for classroom teachers
with national board certification.**

1 (a) The Legislature hereby finds and declares that the
 2 rigorous standards and processes for certification by the
 3 national board for professional teaching standards (NBPTS)
 4 helps to promote the quality of teaching and learning. There-
 5 fore, classroom teachers in the public schools of West Virginia
 6 should be encouraged to achieve national board certification
 7 through a reimbursement of expenses and an additional salary
 8 bonus which reflects their additional certification, to be paid in
 9 accordance with the provisions of this section.

10 (b) One thousand dollars shall be paid annually to each
 11 classroom teacher who holds a valid certificate issued by the
 12 national board of professional teaching standards for the life of
 13 the certification, but in no event more than ten years for any one
 14 certification: *Provided*, That beginning on the first day of July,
 15 two thousand one, in lieu of the one thousand dollars, two
 16 thousand five hundred dollars shall be paid annually to each
 17 classroom teacher who holds a valid certificate issued by the
 18 national board of professional teaching standards for the life of
 19 the certification, but in no event more than ten years for any one
 20 certification.

21 (c) The payments: (i) Shall be in addition to any amounts
22 prescribed in the applicable state minimum salary schedule; (ii)
23 shall be paid in equal monthly installments; and (iii) shall be
24 considered a part of the state minimum salaries for teachers.

25 (d) One thousand dollars shall be paid for reimbursement
26 once to each teacher who enrolls in the program for the national
27 board for professional teaching standards certification and one
28 thousand dollars shall be paid for reimbursement once to each
29 teacher who completes the national board for professional
30 teaching standards certification. Effective the first day of July,
31 two thousand one, in lieu of the one thousand dollar payment
32 for reimbursements, one-half the certification fee shall be paid
33 for reimbursement once to each teacher who enrolls in the
34 program for the national board for professional teaching
35 standards certification and one-half the certification fee shall be
36 paid for reimbursement once to each teacher who completes the
37 national board for professional teaching standards certification.
38 Teachers who achieve national board for professional teaching
39 standards certification may be reimbursed a maximum of six
40 hundred dollars for expenses actually incurred while obtaining
41 the national board for professional teaching standards certifica-
42 tion.

43 (e) The state board shall limit the number of teachers who
44 receive the initial reimbursements of the certification fees set
45 forth in subsection (d) to one hundred teachers annually.
46 Effective the first day of July, two thousand one, in lieu of the
47 limit of one hundred teachers annually, the state board shall
48 limit the number of teachers who receive the initial reimburse-
49 ments of the certification fees set forth in subsection (d) to two
50 hundred teachers annually. The state board shall establish
51 selection criteria for the teachers by the legislative rule required
52 pursuant to subsection (g) of this section.

53 (f) Subject to the provisions of subsection (e) of this
54 section, funding for reimbursement of the certification fee and
55 expenses actually incurred while obtaining the national board

56 for professional teaching standards certifications shall be
57 administered by the state department of education from an
58 appropriation established for that purpose by the Legislature.
59 If funds appropriated by the Legislature to accomplish the
60 purposes of this subsection are insufficient, the state department
61 shall prorate the reimbursements for expenses and shall request
62 of the Legislature, at its next regular session, funds sufficient to
63 accomplish the purposes of this subsection, including needed
64 retroactive payments.

65 (g) The state board shall promulgate legislative rules
66 pursuant to article three-b, chapter twenty-nine-a of this code to
67 implement the provisions of this section.

§18A-4-3. State minimum annual salary increments for principals and assistant principals.

1 In addition to any salary increments for principals and
2 assistant principals, in effect on the first day of January, one
3 thousand nine hundred ninety-six, and paid from local funds,
4 and in addition to the county schedule in effect for teachers, the
5 county board shall pay each principal, a principal's salary
6 increment and each assistant principal an assistant principal's
7 salary increment as prescribed by this section commencing on
8 the first day of July, one thousand nine hundred ninety-six,
9 from state funds appropriated for the salary increments.

10 State funds for this purpose shall be paid within the West
11 Virginia public school support plan in accordance with article
12 nine-a, chapter eighteen of this code.

13 The salary increment in this section for each principal shall
14 be determined by multiplying the basic salary for teachers in
15 accordance with the classification of certification and of
16 training of the principal as prescribed in this article, by the
17 appropriate percentage rate prescribed in this section according
18 to the number of teachers supervised.

19 STATE MINIMUM SALARY INCREMENT
20 RATES FOR PRINCIPALS

21	No. of Teachers	
22	Supervised	Rates
23	1-7	6.0%
24	8-14	6.5%
25	15-24	7.0%
26	25-38	7.5%
27	39-57	8.0%
28	58 and up	8.5%

29 Effective the first day of July, two thousand one, in addition
30 to any salary increments for principals and assistant principals,
31 in effect on the first day of January, two thousand one, and paid
32 from local funds, the following schedule shall be used for
33 calculating the salary increment for principals and assistant
34 principals:

35 STATE MINIMUM SALARY INCREMENT
36 RATES FOR PRINCIPALS

37	No. of Teachers	
38	Supervised	Rates
39	1-7	9.0%
40	8-14	9.5%
41	15-24	10.0%
42	25-38	10.5%
43	39-57	11.0%
44	58 and up	11.5%

45 The salary increment in this section for each assistant
46 principal shall be determined in the same manner as that for
47 principals, utilizing the number of teachers supervised by the
48 principal under whose direction the assistant principal works,

49 except that the percentage rate shall be fifty percent of the rate
50 prescribed for the principal.

51 Salaries for employment beyond the minimum employment
52 term shall be at the same daily rate as the salaries for the
53 minimum employment terms.

54 For the purpose of determining the number of teachers
55 supervised by a principal, the county board shall use data for
56 the second school month of the prior school term and the
57 number of teachers shall be interpreted to mean the total
58 number of professional educators assigned to each school on a
59 full-time equivalency basis: *Provided*, That if there is a change
60 in circumstances because of consolidation or catastrophe, the
61 county board shall determine what is a reasonable number of
62 supervised teachers in order to establish the appropriate
63 increment percentage rate.

64 No county may reduce local funds allocated for salary
65 increments for principals and assistant principals in effect on
66 the first day of January, one thousand nine hundred ninety-six,
67 and used in supplementing the state minimum salaries as
68 provided for in this article, unless forced to do so by defeat of
69 a special levy, or a loss in assessed values or events over which
70 it has no control and for which the county board has received
71 approval from the state board prior to making the reduction.

72 Nothing in this section prevents a county board from
73 providing, in a uniform manner, salary increments greater than
74 those required by this section.

**§18A-4-8. Employment term and class titles of service personnel;
definitions.**

1 (a) The purpose of this section is to establish an employ-
2 ment term and class titles for service personnel. The employ-
3 ment term for service personnel may be no less than ten

4 months. A month is defined as twenty employment days:
5 *Provided*, That the county board may contract with all or part
6 of these service personnel for a longer term. The beginning and
7 closing dates of the ten-month employment term may not
8 exceed forty-three weeks.

9 (b) Service personnel employed on a yearly or twelve-
10 month basis may be employed by calendar months. Whenever
11 there is a change in job assignment during the school year, the
12 minimum pay scale and any county supplement are applicable.

13 (c) Service personnel employed in the same classification
14 for more than the two hundred day minimum employment term
15 shall be paid for additional employment at a daily rate of not
16 less than the daily rate paid for the two hundred day minimum
17 employment term.

18 (d) No service employee, without his or her agreement, may
19 be required to report for work more than five days per week and
20 no part of any working day may be accumulated by the em-
21 ployer for future work assignments, unless the employee agrees
22 thereto.

23 (e) If an employee whose regular work week is scheduled
24 from Monday through Friday agrees to perform any work
25 assignments on a Saturday or Sunday, the employee shall be
26 paid for at least one-half day of work for each day he or she
27 reports for work, and if the employee works more than three
28 and one-half hours on any Saturday or Sunday, he or she shall
29 be paid for at least a full day of work for each day.

30 (f) Custodians, aides, maintenance, office and school lunch
31 employees required to work a daily work schedule that is
32 interrupted, that is, who do not work a continuous period in one
33 day, shall be paid additional compensation equal to at least one
34 eighth of their total salary as provided by their state minimum
35 salary and any county pay supplement, and payable entirely

36 from county funds: *Provided*, That when engaged in duties of
37 transporting students exclusively, aides shall not be regarded as
38 working an interrupted schedule. Maintenance personnel are
39 defined as personnel who hold a classification title other than
40 in a custodial, aide, school lunch, office or transportation
41 category as provided in section one, article one of this chapter.

42 (g) Upon the change in classification or upon meeting the
43 requirements of an advanced classification of or by any
44 employee, the employee's salary shall be made to comply with
45 the requirements of this article, and to any county salary
46 schedule in excess of the minimum requirements of this article,
47 based upon the employee's advanced classification and allow-
48 able years of employment.

49 (h) An employee's contract as provided in section five,
50 article two of this chapter shall state the appropriate monthly
51 salary the employee is to be paid, based on the class title as
52 provided in this article and any county salary schedule in excess
53 of the minimum requirements of this article.

54 (i) The column heads of the state minimum pay scale and
55 class titles, set forth in section eight-a of this article, are defined
56 as follows:

57 (1) "Pay grade" means the monthly salary applicable to
58 class titles of service personnel;

59 (2) "Years of employment" means the number of years
60 which an employee classified as service personnel has been
61 employed by a board in any position prior to or subsequent to
62 the effective date of this section and including service in the
63 armed forces of the United States, if the employee were
64 employed at the time of his or her induction. For the purpose of
65 section eight-a of this article, years of employment shall be
66 limited to the number of years shown and allowed under the

67 state minimum pay scale as set forth in section eight-a of this
68 article;

69 (3) "Class title" means the name of the position or job held
70 by service personnel;

71 (4) "Accountant I" means personnel employed to maintain
72 payroll records and reports and perform one or more operations
73 relating to a phase of the total payroll;

74 (5) "Accountant II" means personnel employed to maintain
75 accounting records and to be responsible for the accounting
76 process associated with billing, budgets, purchasing and related
77 operations;

78 (6) "Accountant III" means personnel who are employed in
79 the county board office to manage and supervise accounts
80 payable and/or payroll procedures;

81 (7) "Accounts payable supervisor" means personnel who
82 are employed in the county board office who have primary
83 responsibility for the accounts payable function, which may
84 include the supervision of other personnel, and who have either
85 completed twelve college hours of accounting courses from an
86 accredited institution of higher education or have at least eight
87 years of experience performing progressively difficult account-
88 ing tasks;

89 (8) "Aide I" means those personnel selected and trained for
90 teacher-aide classifications such as monitor aide, clerical aide,
91 classroom aide or general aide;

92 (9) "Aide II" means those personnel referred to in the "Aide
93 I" classification who have completed a training program
94 approved by the state board, or who hold a high school diploma
95 or have received a general educational development certificate.

96 Only personnel classified in an Aide II class title may be
97 employed as an aide in any special education program;

98 (10) "Aide III" means those personnel referred to in the
99 "Aide I" classification who hold a high school diploma or a
100 general educational development certificate and have completed
101 six semester hours of college credit at an institution of higher
102 education or are employed as an aide in a special education
103 program and have one year's experience as an aide in special
104 education;

105 (11) "Aide IV" means personnel referred to in the "Aide I"
106 classification who hold a high school diploma or a general
107 educational development certificate and who have completed
108 eighteen hours of state board-approved college credit at a
109 regionally accredited institution of higher education, or who
110 have completed fifteen hours of state board-approved college
111 credit at a regionally accredited institution of higher education
112 and successfully completed an in-service training program
113 determined by the state board to be the equivalent of three
114 hours of college credit;

115 (12) "Audiovisual technician" means personnel employed
116 to perform minor maintenance on audiovisual equipment, films,
117 supplies and the filling of requests for equipment;

118 (13) "Auditor" means personnel employed to examine and
119 verify accounts of individual schools and to assist schools and
120 school personnel in maintaining complete and accurate records
121 of their accounts;

122 (14) "Autism mentor" means personnel who work with
123 autistic students and who meet standards and experience to be
124 determined by the state board: *Provided*, That if any employee
125 has held or holds an aide title and becomes employed as an
126 autism mentor, the employee shall hold a multiclassification

127 status that includes aide and autism mentor titles, in accordance
128 with section eight-b of this article;

129 (15) "Braille or sign language specialist" means personnel
130 employed to provide braille and/or sign language assistance to
131 students: *Provided*, That if any employee has held or holds an
132 aide title and becomes employed as a braille or sign language
133 specialist, the employee shall hold a multiclassification status
134 that includes aide and braille or sign language specialist title, in
135 accordance with section eight-b of this article;

136 (16) "Bus operator" means personnel employed to operate
137 school buses and other school transportation vehicles as
138 provided by the state board;

139 (17) "Buyer" means personnel employed to review and
140 write specifications, negotiate purchase bids and recommend
141 purchase agreements for materials and services that meet
142 predetermined specifications at the lowest available costs;

143 (18) "Cabinetmaker" means personnel employed to
144 construct cabinets, tables, bookcases and other furniture;

145 (19) "Cafeteria manager" means personnel employed to
146 direct the operation of a food services program in a school,
147 including assigning duties to employees, approving requisitions
148 for supplies and repairs, keeping inventories, inspecting areas
149 to maintain high standards of sanitation, preparing financial
150 reports and keeping records pertinent to food services of a
151 school;

152 (20) "Carpenter I" means personnel classified as a carpen-
153 ter's helper;

154 (21) "Carpenter II" means personnel classified as a journey-
155 man carpenter;

156 (22) “Chief mechanic” means personnel employed to be
157 responsible for directing activities which ensure that student
158 transportation or other board-owned vehicles are properly and
159 safely maintained;

160 (23) “Clerk I” means personnel employed to perform
161 clerical tasks;

162 (24) “Clerk II” means personnel employed to perform
163 general clerical tasks, prepare reports and tabulations and
164 operate office machines;

165 (25) “Computer operator” means qualified personnel
166 employed to operate computers;

167 (26) “Cook I” means personnel employed as a cook’s
168 helper;

169 (27) “Cook II” means personnel employed to interpret
170 menus, to prepare and serve meals in a food service program of
171 a school and shall include personnel who have been employed
172 as a “Cook I” for a period of four years, if the personnel have
173 not been elevated to this classification within that period of
174 time;

175 (28) “Cook III” means personnel employed to prepare and
176 serve meals, make reports, prepare requisitions for supplies,
177 order equipment and repairs for a food service program of a
178 school system;

179 (29) “Crew leader” means personnel employed to organize
180 the work for a crew of maintenance employees to carry out
181 assigned projects;

182 (30) “Custodian I” means personnel employed to keep
183 buildings clean and free of refuse;

184 (31) "Custodian II" means personnel employed as a
185 watchman or groundsman;

186 (32) "Custodian III" means personnel employed to keep
187 buildings clean and free of refuse, to operate the heating or
188 cooling systems and to make minor repairs;

189 (33) "Custodian IV" means personnel employed as head
190 custodians. In addition to providing services as defined in
191 "custodian III," their duties may include supervising other
192 custodian personnel;

193 (34) "Director or coordinator of services" means personnel
194 who are assigned to direct a department or division. Nothing in
195 this subdivision may prohibit professional personnel or profes-
196 sional educators as defined in section one, article one of this
197 chapter, from holding this class title, but professional personnel
198 may not be defined or classified as service personnel unless the
199 professional personnel held a service personnel title under this
200 section prior to holding class title of "director or coordinator of
201 services." Directors or coordinators of service positions shall be
202 classified as either a professional personnel or service personnel
203 position for state aid formula funding purposes and funding for
204 directors or coordinators of service positions shall be based
205 upon the employment status of the director or coordinator either
206 as a professional personnel or service personnel;

207 (35) "Draftsman" means personnel employed to plan,
208 design and produce detailed architectural/engineering drawings;

209 (36) "Electrician I" means personnel employed as an
210 apprentice electrician helper or who holds an electrician helper
211 license issued by the state fire marshal;

212 (37) "Electrician II" means personnel employed as an
213 electrician journeyman or who holds a journeyman electrician
214 license issued by the state fire marshal;

215 (38) "Electronic technician I" means personnel employed
216 at the apprentice level to repair and maintain electronic equip-
217 ment;

218 (39) "Electronic technician II" means personnel employed
219 at the journeyman level to repair and maintain electronic
220 equipment;

221 (40) "Executive secretary" means personnel employed as
222 the county school superintendent's secretary or as a secretary
223 who is assigned to a position characterized by significant
224 administrative duties;

225 (41) "Food services supervisor" means qualified personnel
226 not defined as professional personnel or professional educators
227 in section one, article one of this chapter, employed to manage
228 and supervise a county school system's food service program.
229 The duties would include preparing in-service training pro-
230 grams for cooks and food service employees, instructing
231 personnel in the areas of quantity cooking with economy and
232 efficiency and keeping aggregate records and reports;

233 (42) "Foremen" means skilled persons employed for
234 supervision of personnel who work in the areas of repair and
235 maintenance of school property and equipment;

236 (43) "General maintenance" means personnel employed as
237 helpers to skilled maintenance employees and to perform minor
238 repairs to equipment and buildings of a county school system;

239 (44) "Glazier" means personnel employed to replace glass
240 or other materials in windows and doors and to do minor
241 carpentry tasks;

242 (45) "Graphic artist" means personnel employed to prepare
243 graphic illustrations;

244 (46) "Groundsmen" means personnel employed to perform
245 duties that relate to the appearance, repair and general care of
246 school grounds in a county school system. Additional assign-
247 ments may include the operation of a small heating plant and
248 routine cleaning duties in buildings;

249 (47) "Handyman" means personnel employed to perform
250 routine manual tasks in any operation of the county school
251 system;

252 (48) "Heating and air conditioning mechanic I" means
253 personnel employed at the apprentice level to install, repair and
254 maintain heating and air conditioning plants and related
255 electrical equipment;

256 (49) "Heating and air conditioning mechanic II" means
257 personnel employed at the journeyman level to install, repair
258 and maintain heating and air conditioning plants and related
259 electrical equipment;

260 (50) "Heavy equipment operator" means personnel em-
261 ployed to operate heavy equipment;

262 (51) "Inventory supervisor" means personnel who are
263 employed to supervise or maintain operations in the receipt,
264 storage, inventory and issuance of materials and supplies;

265 (52) "Key punch operator" means qualified personnel
266 employed to operate key punch machines or verifying ma-
267 chines;

268 (53) "Locksmith" means personnel employed to repair and
269 maintain locks and safes;

270 (54) "Lubrication man" means personnel employed to
271 lubricate and service gasoline or diesel-powered equipment of
272 a county school system;

273 (55) "Machinist" means personnel employed to perform
274 machinist tasks which include the ability to operate a lathe,
275 planer, shaper, threading machine and wheel press. These
276 personnel should also have, the ability to work from blueprints
277 and drawings;

278 (56) "Mail clerk" means personnel employed to receive,
279 sort, dispatch, deliver or otherwise handle letters, parcels and
280 other mail;

281 (57) "Maintenance clerk" means personnel employed to
282 maintain and control a stocking facility to keep adequate tools
283 and supplies on hand for daily withdrawal for all school
284 maintenance crafts;

285 (58) "T¹ Mason" means personnel employed to perform tasks
286 connected with brick and block laying and carpentry tasks
287 related to such laying;

288 (59) "Mechanic" means personnel employed who can
289 independently perform skilled duties in the maintenance and
290 repair of automobiles, school buses and other mechanical and
291 mobile equipment to use in a county school system;

292 (60) "Mechanic assistant" means personnel employed as a
293 mechanic apprentice and helper;

294 (61) "Multiclassification" means personnel employed to
295 perform tasks that involve the combination of two or more class
296 titles in this section. In these instances the minimum salary
297 scale shall be the higher pay grade of the class titles involved;

298 (62) "Office equipment repairman I" means personnel
299 employed as an office equipment repairman apprentice or
300 helper;

301 (63) "Office equipment repairman II" means personnel
302 responsible for servicing and repairing all office machines and
303 equipment. Personnel are responsible for parts being purchased
304 necessary for the proper operation of a program of continuous
305 maintenance and repair;

306 (64) "Painter" means personnel employed to perform duties
307 of painting, finishing and decorating of wood, metal and
308 concrete surfaces of buildings, other structures, equipment,
309 machinery and furnishings of a county school system;

310 (65) "Paraprofessional" means a person certified pursuant
311 to section two-a, article three of this chapter to perform duties
312 in a support capacity including, but not limited to, facilitating
313 in the instruction and direct or indirect supervision of pupils
314 under the direction of a principal, a teacher or another desig-
315 nated professional educator: *Provided*, That no person em-
316 ployed on the effective date of this section in the position of an
317 aide may be reduced in force or transferred to create a vacancy
318 for the employment of a paraprofessional: *Provided, however*,
319 That if any employee has held or holds an aide title and
320 becomes employed as a paraprofessional, the employee shall
321 hold a multiclassification status that includes aide and
322 paraprofessional titles in accordance with section eight-b of this
323 article: *Provided further*, That once an employee who holds an
324 aide title becomes certified as a paraprofessional and is required
325 to perform duties that may not be performed by an aide without
326 paraprofessional certification, he or she shall receive the
327 paraprofessional title pay grade;

328 (66) "Payroll supervisor" means personnel who are
329 employed in the county board office who have primary respon-
330 sibility for the payroll function, which may include the supervi-
331 sion of other personnel, and who have either completed twelve
332 college hours of accounting from an accredited institution of

333 higher education or have at least eight years of experience
334 performing progressively difficult accounting tasks;

335 (67) "Plumber I" means personnel employed as an appren-
336 tice plumber and helper;

337 (68) "Plumber II" means personnel employed as a journey-
338 man plumber;

339 (69) "Printing operator" means personnel employed to
340 operate duplication equipment, and as required, to cut, collate,
341 staple, bind and shelve materials;

342 (70) "Printing supervisor" means personnel employed to
343 supervise the operation of a print shop;

344 (71) "Programmer" means personnel employed to design
345 and prepare programs for computer operation;

346 (72) "Roofing/sheet metal mechanic" means personnel
347 employed to install, repair, fabricate and maintain roofs,
348 gutters, flashing and duct work for heating and ventilation;

349 (73) "Sanitation plant operator" means personnel employed
350 to operate and maintain a water or sewage treatment plant to
351 ensure the safety of the plant's effluent for human consumption
352 or environmental protection;

353 (74) "School bus supervisor" means qualified personnel
354 employed to assist in selecting school bus operators and routing
355 and scheduling of school buses, operate a bus when needed,
356 relay instructions to bus operators, plan emergency routing of
357 buses and promoting good relationships with parents, pupils,
358 bus operators and other employees;

359 (75) "Secretary I" means personnel employed to transcribe
360 from notes or mechanical equipment, receive callers, perform
361 clerical tasks, prepare reports and operate office machines;

362 (76) "Secretary II" means personnel employed in any
363 elementary, secondary, kindergarten, nursery, special education,
364 vocational or any other school as a secretary. The duties may
365 include performing general clerical tasks, transcribing from
366 notes or stenotype or mechanical equipment or a sound-
367 producing machine, preparing reports, receiving callers and
368 referring them to proper persons, operating office machines,
369 keeping records and handling routine correspondence. There is
370 nothing implied in this subdivision that would prevent the
371 employees from holding or being elevated to a higher classifi-
372 cation;

373 (77) "Secretary III" means personnel assigned to the county
374 board office administrators in charge of various instructional,
375 maintenance, transportation, food services, operations and
376 health departments, federal programs or departments with
377 particular responsibilities of purchasing and financial control or
378 any personnel who have served in a position which meets the
379 definition of "secretary II" or "secretary III" in this section for
380 eight years;

381 (78) "Supervisor of maintenance" means skilled personnel
382 not defined as professional personnel or professional educators
383 as in section one, article one of this chapter. The responsibilities
384 would include directing the upkeep of buildings and shops,
385 issuing instructions to subordinates relating to cleaning, repairs
386 and maintenance of all structures and mechanical and electrical
387 equipment of a board;

388 (79) "Supervisor of transportation" means qualified
389 personnel employed to direct school transportation activities,
390 properly and safely, and to supervise the maintenance and

391 repair of vehicles, buses and other mechanical and mobile
392 equipment used by the county school system;

393 (80) "Switchboard operator-receptionist" means personnel
394 employed to refer incoming calls, to assume contact with the
395 public, to direct and to give instructions as necessary, to operate
396 switchboard equipment and to provide clerical assistance;

397 (81) "Truck driver" means personnel employed to operate
398 light or heavy duty gasoline and diesel-powered vehicles;

399 (82) "Warehouse clerk" means personnel employed to be
400 responsible for receiving, storing, packing and shipping goods;

401 (83) "Watchman" means personnel employed to protect
402 school property against damage or theft. Additional assign-
403 ments may include operation of a small heating plant and
404 routine cleaning duties; and

405 (84) "Welder" means personnel employed to provide
406 acetylene or electric welding services for a school system.

407 (j) In addition to the compensation provided for in section
408 eight-a of this article, for service personnel, each service
409 employee is, notwithstanding any provisions in this code to the
410 contrary, entitled to all service personnel employee rights,
411 privileges and benefits provided under this or any other chapter
412 of this code without regard to the employee's hours of employ-
413 ment or the methods or sources of compensation.

414 (k) Service personnel whose years of employment exceed
415 the number of years shown and provided for under the state
416 minimum pay scale set forth in section eight-a of this article
417 may not be paid less than the amount shown for the maximum
418 years of employment shown and provided for in the classifica-
419 tion in which he or she is employed.

420 (l) The county boards shall review each service personnel
421 employee job classification annually and shall reclassify all
422 service employees as required by the job classifications. The
423 state superintendent of schools may withhold state funds
424 appropriated pursuant to this article for salaries for service
425 personnel who are improperly classified by the county boards.
426 Further, the state superintendent shall order county boards to
427 correct immediately any improper classification matter and with
428 the assistance of the attorney general shall take any legal action
429 necessary against any county board to enforce the order.

430 (m) No service employee, without his or her written
431 consent, may be reclassified by class title, nor may a service
432 employee, without his or her written consent, be relegated to
433 any condition of employment which would result in a reduction
434 of his or her salary, rate of pay, compensation or benefits
435 earned during the current fiscal year or which would result in a
436 reduction of his or her salary, rate of pay, compensation or
437 benefits for which he or she would qualify by continuing in the
438 same job position and classification held during that fiscal year
439 and subsequent years.

440 (n) Any board failing to comply with the provisions of this
441 article may be compelled to do so by mandamus, and is liable
442 to any party prevailing against the board for court costs and the
443 prevailing party's reasonable attorney fee, as determined and
444 established by the court.

445 (o) Notwithstanding any provisions in this code to the
446 contrary, service personnel who hold a continuing contract in a
447 specific job classification and who are physically unable to
448 perform the job's duties as confirmed by a physician chosen by
449 the employee shall be given priority status over any employee
450 not holding a continuing contract in filling other service
451 personnel job vacancies if qualified as provided in section
452 eight-e of this article.

§18A-4-8a. Service personnel minimum monthly salaries.

1 (1) The minimum monthly pay for each service employee
 2 whose employment is for a period of more than three and
 3 one-half hours a day shall be at least the amounts indicated in
 4 the “state minimum pay scale pay grade I” and the minimum
 5 monthly pay for each service employee whose employment is
 6 for a period of three and one-half hours or less a day shall be at
 7 least one-half the amount indicated in the “state minimum pay
 8 scale pay grade I” set forth in this section: *Provided*, That
 9 beginning the first day of the second quarter of the employment
 10 term in the school year two thousand one-two thousand two the
 11 minimum monthly pay for each service employee whose
 12 employment is for a period of more than three and one-half
 13 hours a day shall be at least the amounts indicated in the “state
 14 minimum pay scale pay grade II” and the minimum monthly
 15 pay for each service employee whose employment is for a
 16 period of three and one-half hours or less a day shall be at least
 17 one-half the amount indicated in the “state minimum pay scale
 18 pay grade II” set forth in this section.

19 STATE MINIMUM PAY SCALE PAY GRADE I**20 Years of****21 Employment****Pay Grade**

22		A	B	C	D	E	F	G	H
23	0	1,220	1,240	1,280	1,330	1,380	1,440	1,470	1,540
24	1	1,249	1,269	1,309	1,359	1,409	1,469	1,499	1,569
25	2	1,278	1,298	1,338	1,388	1,438	1,498	1,528	1,598
26	3	1,307	1,327	1,367	1,417	1,467	1,527	1,557	1,627
27	4	1,336	1,356	1,396	1,446	1,496	1,556	1,586	1,656
28	5	1,365	1,385	1,425	1,475	1,525	1,585	1,615	1,685
29	6	1,394	1,414	1,454	1,504	1,554	1,614	1,644	1,714
30	7	1,423	1,443	1,483	1,533	1,583	1,643	1,673	1,743
31	8	1,452	1,472	1,512	1,562	1,612	1,672	1,702	1,772

32	9	1,481	1,501	1,541	1,591	1,641	1,701	1,731	1,801
33	10	1,510	1,530	1,570	1,620	1,670	1,730	1,760	1,830
34	11	1,539	1,559	1,599	1,649	1,699	1,759	1,789	1,859
35	12	1,568	1,588	1,628	1,678	1,728	1,788	1,818	1,888
36	13	1,597	1,617	1,657	1,707	1,757	1,817	1,847	1,917
37	14	1,626	1,646	1,686	1,736	1,786	1,846	1,876	1,946
38	15	1,655	1,675	1,715	1,765	1,815	1,875	1,905	1,975
39	16	1,684	1,704	1,744	1,794	1,844	1,904	1,934	2,004
40	17	1,713	1,733	1,773	1,823	1,873	1,933	1,963	2,033
41	18	1,742	1,762	1,802	1,852	1,902	1,962	1,992	2,062
42	19	1,771	1,791	1,831	1,881	1,931	1,991	2,021	2,091
43	20	1,800	1,820	1,860	1,910	1,960	2,020	2,050	2,120
44	21	1,829	1,849	1,889	1,939	1,989	2,049	2,079	2,149
45	22	1,858	1,878	1,918	1,968	2,018	2,078	2,108	2,178
46	23	1,887	1,907	1,947	1,997	2,047	2,107	2,137	2,207
47	24	1,916	1,936	1,976	2,026	2,076	2,136	2,166	2,236
48	25	1,945	1,965	2,005	2,055	2,105	2,165	2,195	2,265
49	26	1,974	1,994	2,034	2,084	2,134	2,194	2,224	2,294
50	27	2,003	2,023	2,063	2,113	2,163	2,223	2,253	2,323
51	28	2,032	2,052	2,092	2,142	2,192	2,252	2,282	2,352
52	29	2,061	2,081	2,121	2,171	2,221	2,281	2,311	2,381
53	30	2,090	2,110	2,150	2,200	2,250	2,310	2,340	2,410
54	31	2,119	2,139	2,179	2,229	2,279	2,339	2,369	2,439
55	32	2,148	2,168	2,208	2,258	2,308	2,368	2,398	2,468
56	33	2,177	2,197	2,237	2,287	2,337	2,397	2,427	2,497
57	34	2,206	2,226	2,266	2,316	2,366	2,426	2,456	2,526
58	35	2,235	2,255	2,295	2,345	2,395	2,455	2,485	2,555
59	36	2,264	2,284	2,324	2,374	2,424	2,484	2,514	2,584
60	37	2,293	2,313	2,353	2,403	2,453	2,513	2,543	2,613
61	38	2,322	2,342	2,382	2,432	2,482	2,542	2,572	2,642
62	39	2,351	2,371	2,411	2,461	2,511	2,571	2,601	2,671
63	40	2,380	2,400	2,440	2,490	2,540	2,600	2,630	2,700

64 STATE MINIMUM PAY SCALE PAY GRADE II

65	Years of									
66	Employment	Pay Grade								
		A	B	C	D	E	F	G	H	
67	0	1,295	1,315	1,355	1,405	1,455	1,515	1,545	1,615	
68	1	1,325	1,345	1,385	1,435	1,485	1,545	1,575	1,645	
69	2	1,355	1,375	1,415	1,465	1,515	1,575	1,605	1,675	
70	3	1,385	1,405	1,445	1,495	1,545	1,605	1,635	1,705	
71	4	1,415	1,435	1,475	1,525	1,575	1,635	1,665	1,735	
72	5	1,445	1,465	1,505	1,555	1,605	1,665	1,695	1,765	
73	6	1,475	1,495	1,535	1,585	1,635	1,695	1,725	1,795	
74	7	1,505	1,525	1,565	1,615	1,665	1,725	1,755	1,825	
75	8	1,535	1,555	1,595	1,645	1,695	1,755	1,785	1,855	
76	9	1,565	1,585	1,625	1,675	1,725	1,785	1,815	1,885	
77	10	1,595	1,615	1,655	1,705	1,755	1,815	1,845	1,915	
78	11	1,625	1,645	1,685	1,735	1,785	1,845	1,875	1,945	
79	12	1,655	1,675	1,715	1,765	1,815	1,875	1,905	1,975	
80	13	1,685	1,705	1,745	1,795	1,845	1,905	1,935	2,005	
81	14	1,715	1,735	1,775	1,825	1,875	1,935	1,965	2,035	
82	15	1,745	1,765	1,805	1,855	1,905	1,965	1,995	2,065	
83	16	1,775	1,795	1,835	1,885	1,935	1,995	2,025	2,095	
84	17	1,805	1,825	1,865	1,915	1,965	2,025	2,055	2,125	
85	18	1,835	1,855	1,895	1,945	1,995	2,055	2,085	2,155	
86	19	1,865	1,885	1,925	1,975	2,025	2,085	2,115	2,185	
87	20	1,895	1,915	1,955	2,005	2,055	2,115	2,145	2,215	
88	21	1,925	1,945	1,985	2,035	2,085	2,145	2,175	2,245	
89	22	1,955	1,975	2,015	2,065	2,115	2,175	2,205	2,275	
90	23	1,985	2,005	2,045	2,095	2,145	2,205	2,235	2,305	
91	24	2,015	2,035	2,075	2,125	2,175	2,235	2,265	2,335	
92	25	2,045	2,065	2,105	2,155	2,205	2,265	2,295	2,365	
93	26	2,075	2,095	2,135	2,185	2,235	2,295	2,325	2,395	
94	27	2,105	2,125	2,165	2,215	2,265	2,325	2,355	2,425	
95	28	2,135	2,155	2,195	2,245	2,295	2,355	2,385	2,455	
96	29	2,165	2,185	2,225	2,275	2,325	2,385	2,415	2,485	
97	30	2,195	2,215	2,255	2,305	2,355	2,415	2,445	2,515	
98	31	2,225	2,245	2,285	2,335	2,385	2,445	2,475	2,545	
99	32	2,255	2,275	2,315	2,365	2,415	2,475	2,505	2,575	
100	33	2,285	2,305	2,345	2,395	2,445	2,505	2,535	2,605	
101	34	2,315	2,335	2,375	2,425	2,475	2,535	2,565	2,635	
102	35	2,345	2,365	2,405	2,455	2,505	2,565	2,595	2,665	

103	36	2,375	2,395	2,435	2,485	2,535	2,595	2,625	2,695
104	37	2,405	2,425	2,465	2,515	2,565	2,625	2,655	2,725
105	38	2,435	2,455	2,495	2,545	2,595	2,655	2,685	2,755
106	39	2,465	2,485	2,525	2,575	2,625	2,685	2,715	2,785
107	40	2,495	2,515	2,555	2,605	2,655	2,715	2,745	2,815

108	CLASS TITLE	PAY GRADE
109	Accountant I	D
110	Accountant II	E
111	Accountant III	F
112	Accounts Payable Supervisor	G
113	Aide I	A
114	Aide II	B
115	Aide III	C
116	Aide IV	D
117	Audiovisual Technician	C
118	Auditor	G
119	Autism Mentor	E
120	Braille or Sign Language Specialist	E
121	Bus Operator	D
122	Buyer	F
123	Cabinetmaker	G
124	Cafeteria Manager	D
125	Carpenter I	E
126	Carpenter II	F
127	Chief Mechanic	G
128	Clerk I	B
129	Clerk II	C
130	Computer Operator	E
131	Cook I	A
132	Cook II	B
133	Cook III	C
134	Crew Leader	F
135	Custodian I	A
136	Custodian II	B
137	Custodian III	C

138	Custodian IV	D
139	Director or Coordinator of Services	H
140	Draftsman	D
141	Electrician I	F
142	Electrician II	G
143	Electronic Technician I	F
144	Electronic Technician II	G
145	Executive Secretary	G
146	Food Services Supervisor	G
147	Foreman	G
148	General Maintenance	C
149	Glazier	D
150	Graphic Artist	D
151	Groundsman	B
152	Handyman	B
153	Heating and Air Conditioning Mechanic I	E
154	Heating and Air Conditioning Mechanic II	G
155	Heavy Equipment Operator	E
156	Inventory Supervisor	D
157	Key Punch Operator	B
158	Locksmith	G
159	Lubrication Man	C
160	Machinist	F
161	Mail Clerk	D
162	Maintenance Clerk	C
163	Mason	G
164	Mechanic	F
165	Mechanic Assistant	E
166	Office Equipment Repairman I	F
167	Office Equipment Repairman II	G
168	Painter	E
169	Paraprofessional	F
170	Payroll Supervisor	G
171	Plumber I	E
172	Plumber II	G

173	Printing Operator	B
174	Printing Supervisor	D
175	Programmer	H
176	Roofing/Sheet Metal Mechanic	F
177	Sanitation Plant Operator	F
178	School Bus Supervisor	E
179	Secretary I	D
180	Secretary II	E
181	Secretary III	F
182	Supervisor of Maintenance	H
183	Supervisor of Transportation	H
184	Switchboard Operator-Receptionist	D
185	Truck Driver	D
186	Warehouse Clerk	C
187	Watchman	B
188	Welder	F

189 (2) An additional ten dollars per month shall be added to
 190 the minimum monthly pay of each service employee who holds
 191 a high school diploma or its equivalent: *Provided*, That
 192 effective the first day of July, two thousand one, an additional
 193 twelve dollars per month shall be added to the minimum
 194 monthly pay of each service employee who holds a high school
 195 diploma or its equivalent.

196 (3) An additional ten dollars per month also shall be added
 197 to the minimum monthly pay of each service employee for
 198 each of the following:

199 (A) A service employee who holds twelve college hours or
 200 comparable credit obtained in a trade or vocational school as
 201 approved by the state board;

202 (B) A service employee who holds twenty-four college
 203 hours or comparable credit obtained in a trade or vocational
 204 school as approved by the state board;

205 (C) A service employee who holds thirty-six college hours
206 or comparable credit obtained in a trade or vocational school as
207 approved by the state board;

208 (D) A service employee who holds forty-eight college
209 hours or comparable credit obtained in a trade or vocational
210 school as approved by the state board;

211 (E) A service employee who holds sixty college hours or
212 comparable credit obtained in a trade or vocational school as
213 approved by the state board;

214 (F) A service employee who holds seventy-two college
215 hours or comparable credit obtained in a trade or vocational
216 school as approved by the state board;

217 (G) Effective the first day of July, two thousand one, a
218 service employee who holds eighty-four college hours or
219 comparable credit obtained in a trade or vocational school as
220 approved by the state board;

221 (H) Effective the first day of July, two thousand one, a
222 service employee who holds ninety-six college hours or
223 comparable credit obtained in a trade or vocational school as
224 approved by the state board;

225 (I) Effective the first day of July, two thousand one, a
226 service employee who holds one hundred eight college hours
227 or comparable credit obtained in a trade or vocational school as
228 approved by the state board;

229 (J) Effective the first day of July, two thousand one, a
230 service employee who holds one hundred twenty college hours
231 or comparable credit obtained in a trade or vocational school as
232 approved by the state board;

233 (K) Effective the first day of July, two thousand one, a
234 service employee who holds a bachelor's degree; and

235 (L) Effective the first day of July, two thousand one, a
236 service employee who holds a master's degree.

237 (4) When any part of a school service employee's daily
238 shift of work is performed between the hours of six o'clock
239 p.m. and five o'clock a.m. the following day, the employee
240 shall be paid no less than an additional ten dollars per month
241 and one half of the pay shall be paid with local funds.

242 (5) Any service employee required to work on any legal
243 school holiday shall be paid at a rate one and one-half times the
244 employee's usual hourly rate.

245 (6) Any full-time service personnel required to work in
246 excess of their normal working day during any week which
247 contains a school holiday for which they are paid shall be paid
248 for the additional hours or fraction of the additional hours at a
249 rate of one and one-half times their usual hourly rate and paid
250 entirely from county board funds.

251 (7) No service employee may have his or her daily work
252 schedule changed during the school year without the em-
253 ployee's written consent and the employee's required daily
254 work hours may not be changed to prevent the payment of time
255 and one-half wages or the employment of another employee.

256 (8) The minimum hourly rate of pay for extra duty assign-
257 ments as defined in section eight-b of this article shall be no
258 less than one seventh of the employee's daily total salary for
259 each hour the employee is involved in performing the assign-
260 ment and paid entirely from local funds: *Provided*, That an
261 alternative minimum hourly rate of pay for performing extra
262 duty assignments within a particular category of employment
263 may be utilized if the alternate hourly rate of pay is approved

264 both by the county board and by the affirmative vote of a two-
265 thirds majority of the regular full-time employees within that
266 classification category of employment within that county:
267 *Provided, however,* That the vote shall be by secret ballot if
268 requested by a service personnel employee within that classifi-
269 cation category within that county. The salary for any fraction
270 of an hour the employee is involved in performing the assign-
271 ment shall be prorated accordingly. When performing extra
272 duty assignments, employees who are regularly employed on
273 a one-half day salary basis shall receive the same hourly extra
274 duty assignment pay computed as though the employee were
275 employed on a full-day salary basis.

276 (9) The minimum pay for any service personnel employees
277 engaged in the removal of asbestos material or related duties
278 required for asbestos removal shall be their regular total daily
279 rate of pay and no less than an additional three dollars per hour
280 or no less than five dollars per hour for service personnel
281 supervising asbestos removal responsibilities for each hour
282 these employees are involved in asbestos related duties.
283 Related duties required for asbestos removal include, but are
284 not limited to, travel, preparation of the work site, removal of
285 asbestos decontamination of the work site, placing and removal
286 of equipment and removal of structures from the site. If any
287 member of an asbestos crew is engaged in asbestos related
288 duties outside of the employee's regular employment county,
289 the daily rate of pay shall be no less than the minimum amount
290 as established in the employee's regular employment county
291 for asbestos removal and an additional thirty dollars per each
292 day the employee is engaged in asbestos removal and related
293 duties. The additional pay for asbestos removal and related
294 duties shall be payable entirely from county funds. Before
295 service personnel employees may be utilized in the removal of
296 asbestos material or related duties, they shall have completed
297 a federal Environmental Protection Act approved training
298 program and be licensed. The employer shall provide all

299 necessary protective equipment and maintain all records
300 required by the Environmental Protection Act.

301 (10) For the purpose of qualifying for additional pay as
302 provided in section eight, article five of this chapter, an aide
303 shall be considered to be exercising the authority of a supervi-
304 sory aide and control over pupils if the aide is required to
305 supervise, control, direct, monitor, escort or render service to
306 a child or children when not under the direct supervision of
307 certificated professional personnel within the classroom,
308 library, hallway, lunchroom, gymnasium, school building,
309 school grounds or wherever supervision is required. For
310 purposes of this section, "under the direct supervision of
311 certificated professional personnel" means that certificated
312 professional personnel is present, with and accompanying the
313 aide.

CHAPTER 19. AGRICULTURE.

ARTICLE 23. HORSE AND DOG RACING.

§19-23-13c. Expenditure of racetrack video lottery distribution.

1 (a) Funds received by the racing commission pursuant to
2 subdivision (6), subsection (c), section ten, article twenty-two-
3 a, chapter twenty-nine of this code, and subdivision (5),
4 subsection (a), section 10b, article twenty-two-a, chapter
5 twenty-nine of this code, after the effective date of this section
6 together with the balance in the bank account previously
7 established by the commission to receive those funds shall be
8 deposited in a banking institution of its choice in a special
9 account to be known as "West Virginia Racing Commission
10 Racetrack Video Lottery Account." Notice of the amount, date
11 and place of each deposit shall be given by the racing commis-
12 sion, in writing, to the state treasurer.

13 (b) Funds in this account shall be allocated and expended
14 as follows:

15 (1) For each fiscal year, the first eight hundred thousand
16 dollars deposited in the separate account plus the amount then
17 remaining of the June thirtieth, one thousand nine hundred
18 ninety-seven, balance in the separate account previously
19 established for the West Virginia breeders classic under section
20 thirteen of this article, shall be used by the commission for
21 promotional activities, advertising, administrative costs and
22 purses for the West Virginia thoroughbred breeders classic,
23 which shall give equal consideration to all horses qualifying
24 under the West Virginia breeders program for each stake race,
25 based solely on the horses' sex, age and earnings.

26 (2) For each fiscal year, the next two hundred thousand
27 dollars deposited into the separate account shall be used by the
28 commission for promotional activities and purses for open stake
29 races for a race event to be known as the West Virginia derby
30 to be held at a thoroughbred racetrack which does not partici-
31 pate in the West Virginia thoroughbred development fund.

32 (3) For each fiscal year, once the amounts provided in
33 subdivisions (1) and (2) of this subsection (b) have been
34 deposited into separate bank accounts for use in connection
35 with the West Virginia thoroughbred breeders classics and the
36 West Virginia derby, the commission shall return to each
37 racetrack all additional amounts deposited which originate
38 during that fiscal year from each respective racetrack pursuant
39 to subdivision (6), subsection (c), section ten, article twenty-
40 two-a, chapter twenty-nine of this code, which returned excess
41 funds shall be used as follows:

42 (A) For each dog racetrack, one half of the returned excess
43 funds shall be used for capital improvements at the racetrack
44 and one half of the returned excess funds shall be deposited into
45 the West Virginia racing commission special account - West
46 Virginia greyhound breeding development fund.

47 (B) At those thoroughbred racetracks that have participated
48 in the West Virginia thoroughbred development fund for a
49 period of more than four consecutive calendar years prior to the
50 thirty-first day of December, one thousand nine hundred ninety-
51 two, one half of the returned excess funds shall be used for
52 capital improvements at the licensee's racetrack and one half of
53 the returned excess funds shall be equally divided between the
54 West Virginia thoroughbred breeders classic and the West
55 Virginia thoroughbred development fund.

56 (C) At those thoroughbred horse racetracks which do not
57 participate in the West Virginia thoroughbred development
58 fund, one half of the returned excess funds shall be used for
59 capital improvements at the licensee's racetrack and one half of
60 the returned excess funds shall be used for purses for the open
61 stakes race event known as the West Virginia derby.

62 (c) All expenditures that are funded under this section must
63 be approved in writing by the West Virginia racing commission
64 before the funds are expended for any of the purposes autho-
65 rized by this section.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

Article

22. State Lottery Act.

22A. Racetrack Video Lottery.

22B. Limited Video Lottery.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-5. State lottery commission; powers and duties; cooperation of other agencies.

§29-22-18. State lottery fund; appropriations and deposits; not part of general revenue; no transfer of state funds after initial appropriation; use and repayment of initial appropriation; allocation of fund for prizes, net profit and expenses; surplus; state lottery education fund; state lottery senior citizens fund; allocation and appropriation of net profits.

§29-22-18a. State excess lottery revenue fund.

§29-22-5. State lottery commission; powers and duties; cooperation of other agencies.

1 (a) The commission has the authority to:

2 (1) Promulgate rules in accordance with chapter twenty-
3 nine-a of this code: *Provided*, That those rules promulgated by
4 the commission that are necessary to begin the lottery games
5 selected shall be exempted from the provisions of chapter
6 twenty-nine-a of this code in order that the selected games may
7 commence as soon as possible;

8 (2) Establish rules for conducting lottery games, a manner
9 of selecting the winning tickets and manner of payment of
10 prizes to the holders of winning tickets;

11 (3) Select the type and number of public gaming systems or
12 games, to be played in accordance with the provisions of this
13 article;

14 (4) Contract, if deemed desirable, with the educational
15 broadcasting authority to provide services through its micro-
16 wave interconnection system to make available to public
17 broadcasting stations servicing this state and, at no charge, for
18 rebroadcast to commercial broadcasting stations within this
19 state, any public gaming system or games drawing;

20 (5) Enter into interstate and international lottery agreements
21 with other states or foreign countries, or any combination of
22 one or more states and one or more foreign countries;

23 (6) Adopt an official seal;

24 (7) Maintain a principal office and, if necessary, regional
25 suboffices at locations properly designated or provided;

26 (8) Prescribe a schedule of fees and charges;

27 (9) Sue and be sued;

28 (10) Lease, rent, acquire, purchase, own, hold, construct,
29 equip, maintain, operate, sell, encumber and assign rights of
30 any property, real or personal, consistent with the objectives of
31 the commission as set forth in this article;

32 (11) Designate one of the deputy directors to serve as acting
33 director during the absence of the director;

34 (12) Hold hearings on any matter of concern to the commis-
35 sion relating to the lottery, subpoena witnesses, administer
36 oaths, take testimony, require the production of evidence and
37 documentary evidence and designate hearing examiners and
38 employees to so act; and

39 (13) To make and enter into all agreements and do all acts
40 necessary or incidental to the performance of its duties and the
41 exercise of its powers under this article.

42 (b) Departments, boards, commissions or other agencies of
43 this state shall provide assistance to the state lottery office upon
44 the request of the director.

45 (c) Upon the request of the deputy director for the security
46 and licensing division in conjunction with the director, the
47 attorney general, department of public safety and all other law-
48 enforcement agencies shall furnish to the director and the
49 deputy director such information as may tend to assure the
50 security, honesty, fairness and integrity in the operation and
51 administration of the lottery as they may have in their posses-
52 sion, including, but not limited to, manual or computerized
53 information and data. The director is to designate such employ-
54 ees of the security and licensing division as may be necessary
55 to act as enforcement agents. Such agents are authorized to
56 investigate complaints made to the commission or the state
57 lottery office concerning possible violation of the provisions of
58 this article and determine whether to recommend criminal
59 prosecution. If it is determined that action is necessary, an
60 agent, after approval of the director, is to make such recommen-

61 dation to the prosecuting attorney in the county wherein the
62 violation occurred or to any appropriate law-enforcement
63 agency.

§29-22-18. State lottery fund; appropriations and deposits; not part of general revenue; no transfer of state funds after initial appropriation; use and repayment of initial appropriation; allocation of fund for prizes, net profit and expenses; surplus; state lottery education fund; state lottery senior citizens fund; allocation and appropriation of net profits.

1 (a) There is hereby continued a special revenue fund in the
2 state treasury which shall be designated and known as the “state
3 lottery fund”. The fund consists of all appropriations to the fund
4 and all interest earned from investment of the fund and any
5 gifts, grants or contributions received by the fund. All revenues
6 received from the sale of lottery tickets, materials and games
7 shall be deposited with the state treasurer and placed into the
8 “state lottery fund”. The revenue shall be disbursed in the
9 manner provided in this section for the purposes stated in this
10 section and shall not be treated by the auditor and treasurer as
11 part of the general revenue of the state.

12 (b) No appropriation, loan or other transfer of state funds
13 may be made to the commission or lottery fund after the initial
14 appropriation.

15 (c) A minimum annual average of forty-five percent of the
16 gross amount received from each lottery shall be allocated and
17 disbursed as prizes.

18 (d) Not more than fifteen percent of the gross amount
19 received from each lottery may be allocated to and may be
20 disbursed as necessary for fund operation and administration
21 expenses: *Provided*, That for the period beginning the first day
22 of January, two thousand two, through the thirtieth day of June,
23 two thousand three, not more than seventeen percent of the

24 gross amount received from each lottery shall be allocated to
25 and may be disbursed as necessary for fund operation and
26 administration expenses.

27 (e) The excess of the aggregate of the gross amount
28 received from all lotteries over the sum of the amounts allo-
29 cated by subsections (c) and (d) of this section shall be allo-
30 cated as net profit. In the event that the percentage allotted for
31 operations and administration generates a surplus, the surplus
32 shall be allowed to accumulate to an amount not to exceed two
33 hundred fifty thousand dollars. On a monthly basis, the director
34 shall report to the joint committee on government and finance
35 of the Legislature any surplus in excess of two hundred fifty
36 thousand dollars and remit to the state treasurer the entire
37 amount of those surplus funds in excess of two hundred fifty
38 thousand dollars which shall be allocated as net profit.

39 (f) After first satisfying the requirements for funds dedi-
40 cated to the school building debt service fund in subsection (h)
41 of this section to retire the ten-year bonds authorized to be
42 issued pursuant to section eight, article nine-d, chapter eighteen
43 of this code, and then satisfying the requirements for funds
44 dedicated to the education, arts, sciences and tourism debt
45 service fund in subsection (i) of this section to retire the bonds
46 authorized to be issued pursuant to section eleven-a, article six,
47 chapter five of this code, the Legislature shall annually appro-
48 priate all of the remaining amounts allocated as net profits in
49 subsection (e) of this section, in such proportions as it considers
50 beneficial to the citizens of this state, to: (1) The lottery
51 education fund created in subsection (g) of this section; (2) the
52 school construction fund created in section six, article nine-d,
53 chapter eighteen of this code; (3) the lottery senior citizens fund
54 created in subsection (j) of this section; and (4) the division of
55 natural resources created in section three, article one, chapter
56 twenty of this code and the West Virginia development office
57 as created in section one, article two, chapter five-b of this
58 code, in accordance with subsection (k) of this section. No

59 transfer to any account other than the school building debt
60 service account and the education, arts, sciences and tourism
61 debt service fund may be made in any period of time in which
62 a default exists in respect to debt service on bonds issued by the
63 school building authority and the state building commission
64 which are secured by lottery proceeds. No additional transfer
65 may be made to any account other than the school building debt
66 service account and the education, arts, sciences and tourism
67 debt service fund when net profits for the preceding twelve
68 months are not at least equal to one hundred fifty percent of
69 debt service on bonds issued by the school building authority
70 and the state building commission which are secured by net
71 profits.

72 (g) There is hereby continued a special revenue fund in the
73 state treasury which shall be designated and known as the
74 "lottery education fund." The fund shall consist of the amounts
75 allocated pursuant to subsection (f) of this section, which shall
76 be deposited into the lottery education fund by the state
77 treasurer. The lottery education fund shall also consist of all
78 interest earned from investment of the lottery education fund
79 and any other appropriations, gifts, grants, contributions or
80 moneys received by the lottery education fund from any source.
81 The revenues received or earned by the lottery education fund
82 shall be disbursed in the manner provided below and may not
83 be treated by the auditor and treasurer as part of the general
84 revenue of the state. Annually, the Legislature shall appropriate
85 the revenues received or earned by the lottery education fund to
86 the state system of public and higher education for these
87 educational programs it considers beneficial to the citizens of
88 this state.

89 (h) On or before the twenty-eighth day of each month
90 through the twentieth day of June, two thousand five, the lottery
91 director shall allocate to the school building debt service fund
92 created pursuant to the provisions of section six, article nine-d,

93 chapter eighteen of this code, as a first priority from the net
94 profits of the lottery for the preceding month, an amount equal
95 to one tenth of the projected annual principal, interest and
96 coverage ratio requirements on any and all revenue bonds and
97 refunding bonds issued, or to be issued, on or after the first day
98 of April, one thousand nine hundred ninety-four, as certified to
99 the lottery director in accordance with the provisions of section
100 six, article nine-d, chapter eighteen of this code. In no event
101 shall the monthly amount allocated exceed one million eight
102 hundred thousand dollars, nor may the total allocation of the net
103 profits to be paid into the school building debt service fund, as
104 provided in this section, in any fiscal year exceed the lesser of
105 the principal and interest requirements certified to the lottery
106 director or eighteen million dollars. In the event there are
107 insufficient funds available in any month to transfer the amount
108 required to be transferred pursuant to this subsection to the
109 school debt service fund, the deficiency shall be added to the
110 amount transferred in the next succeeding month in which
111 revenues are available to transfer the deficiency. A lien on the
112 proceeds of the state lottery fund up to a maximum amount
113 equal to the projected annual principal, interest and coverage
114 ratio requirements, not to exceed twenty-seven million dollars
115 annually, may be granted by the school building authority in
116 favor of the bonds it issues which are secured by the net lottery
117 profits.

118 When the school improvement bonds, secured by profits
119 from the lottery and deposited in the school debt service fund,
120 mature, the profits shall become available for debt service on
121 additional school improvement bonds or may at the discretion
122 of the authority be placed into the school construction fund
123 created pursuant to the provisions of section six, article nine-d,
124 chapter eighteen of this code.

125 (i) Beginning on or before the twenty-eighth day of July,
126 one thousand nine hundred ninety-six, and continuing on or

127 before the twenty-eighth day of each succeeding month
128 thereafter through the twenty-eighth day of June, two thousand
129 twenty-one, the lottery director shall allocate to the education,
130 arts, sciences and tourism debt service fund created pursuant to
131 the provisions of section eleven-a, article six, chapter five of
132 this code, as a second priority from the net profits of the lottery
133 for the preceding month, an amount equal to one tenth of the
134 projected annual principal, interest and coverage ratio require-
135 ments on any and all revenue bonds and refunding bonds
136 issued, or to be issued, on or after the first day of April, one
137 thousand nine hundred ninety-six, as certified to the lottery
138 director in accordance with the provisions of that section. In no
139 event may the monthly amount allocated exceed one million
140 dollars nor may the total allocation paid into the education, arts,
141 sciences and tourism debt service fund, as provided in this
142 section, in any fiscal year exceed the lesser of the principal and
143 interest requirements certified to the lottery director or ten
144 million dollars. In the event there are insufficient funds
145 available in any month to transfer the amount required pursuant
146 to this subsection to the education, arts, sciences and tourism
147 debt service fund, the deficiency shall be added to the amount
148 transferred in the next succeeding month in which revenues are
149 available to transfer the deficiency. A second-in-priority lien on
150 the proceeds of the state lottery fund up to a maximum amount
151 equal to the projected annual principal, interest and coverage
152 ratio requirements, not to exceed fifteen million dollars
153 annually, may be granted by the state building commission in
154 favor of the bonds it issues which are secured by the net lottery
155 profits.

156 (j) There is hereby continued a special revenue fund in the
157 state treasury which shall be designated and known as the
158 "lottery senior citizens fund." The fund shall consist of the
159 amounts allocated pursuant to subsection (f) of this section,
160 which amounts shall be deposited into the lottery senior citizens
161 fund by the state treasurer. The lottery senior citizens fund shall

162 also consist of all interest earned from investment of the lottery
163 senior citizens fund and any other appropriations, gifts, grants,
164 contributions or moneys received by the lottery senior citizens
165 fund from any source. The revenues received or earned by the
166 lottery senior citizens fund shall be distributed in the manner
167 provided below and may not be treated by the auditor or
168 treasurer as part of the general revenue of the state. Annually,
169 the Legislature shall appropriate the revenues received or
170 earned by the lottery senior citizens fund to such senior citizens
171 medical care and other programs as it considers beneficial to
172 the citizens of this state.

173 (k) The division of natural resources and the West Virginia
174 development office, as appropriated by the Legislature, may use
175 the amounts allocated to them pursuant to subsection (f) of this
176 section for one or more of the following purposes: (1) The
177 payment of any or all of the costs incurred in the development,
178 construction, reconstruction, maintenance or repair of any
179 project or recreational facility, as these terms are defined in
180 section four, article five, chapter twenty of this code, pursuant
181 to the authority granted to it under article five, chapter twenty
182 of this code; (2) the payment, funding or refunding of the
183 principal of, interest on or redemption premiums on any bonds,
184 security interests or notes issued by the parks and recreation
185 section of the division of natural resources under article five,
186 chapter twenty of this code; or (3) the payment of any advertis-
187 ing and marketing expenses for the promotion and development
188 of tourism or any tourist facility or attraction in this state.

§29-22-18a. State excess lottery revenue fund.

1 (a) There is hereby created a special revenue fund within
2 the state lottery fund in the state treasury which shall be
3 designated and known as the "state excess lottery revenue
4 fund". The fund shall consist of all appropriations to the fund
5 and all interest earned from investment of the fund and any

6 gifts, grants or contributions received by the fund. All revenues
7 received under the provisions of sections ten-b and ten-c, article
8 twenty-two-a of this chapter and under article twenty-two-b of
9 this chapter, except the amounts due the commission under
10 section 29-22B-1408(a)(1) of this chapter, shall be deposited in
11 the state treasury and placed into the "state excess lottery
12 revenue fund". The revenue shall be disbursed in the manner
13 provided in this section for the purposes stated in this section
14 and shall not be treated by the auditor and the state treasurer as
15 part of the general revenue of the state.

16 (b) For the fiscal year beginning the first day of July, two
17 thousand one, the moneys of the fund established in this section
18 shall be used for the purpose of subsidizing salary increases and
19 associated employee benefits paid from the state general
20 revenue fund as determined by the secretary of administration
21 effective the first day of July, two thousand one or thereafter,
22 including, but not limited to, the salary increase for teachers
23 provided in section two, article four, chapter eighteen-a of this
24 code, by enactment of the Legislature in two thousand one; the
25 salary increase for members of the state police provided in
26 section five, article two, chapter fifteen of this code by enact-
27 ment of the Legislature in two thousand one; and general salary
28 increases for state employees: *Provided*, That effective the first
29 day of October, two thousand one, the full year salary increases
30 for state employees other than correctional officers and mem-
31 bers of the state police equal seven hundred fifty-six dollars for
32 each full-time employee: *Provided, however*, That effective the
33 first day of July, two thousand one, the full year salary in-
34 creases for uniformed correctional officers equal two thousand
35 dollars for each full-time employee; and that the full year salary
36 increases for non-uniformed correctional staff, whose core
37 duties include contact with inmates or juvenile detainees on a
38 regular and frequent basis, equal one thousand two hundred
39 fifty dollars for each full-time employee; but that for all other
40 division of correction and division of juvenile services employ-

41 ees, the full year salary increase equals seven hundred fifty-six
42 dollars for each full-time employee. Until the thirtieth day of
43 June, two thousand two, the lottery commission shall, upon
44 direction from the governor, transfer the moneys of the account
45 to the state general revenue fund in the amounts specified in the
46 governor's official revenue estimates to subsidize the funding
47 of the salary increases described in this subsection. Beginning
48 the first day of July, two thousand two, and thereafter, the
49 transfer authority granted by this subsection is terminated. After
50 first satisfying the funding requirements directed by this
51 subsection, the moneys remaining in the fund shall be disbursed
52 in the manner provided by subsection (c) of this section.

53 (c) For the fiscal year beginning the first day of July, two
54 thousand one, the commission shall deposit: (1) Five million
55 five hundred thousand dollars into the account hereby created
56 in the state treasury to be known as the "education improvement
57 fund" for appropriation by the Legislature to the "promise
58 scholarship fund" created in section seven, article seven,
59 chapter eighteen-c of this code; (2) twenty-five million dollars
60 to the school building debt service fund created in section six,
61 article nine-d, chapter eighteen of this code for the issuance of
62 revenue bonds; (3) twenty-five million dollars in the West
63 Virginia infrastructure fund created in section nine, article
64 fifteen-a, chapter thirty-one of this code to be spent in accor-
65 dance with the provisions of that article; (4) ten million dollars
66 into a separate account within the state lottery fund to be known
67 as the higher education improvement fund for higher education;
68 and (5) nine million dollars into a separate account within the
69 state lottery fund to be known as the state park improvement
70 fund for park improvements. For the fiscal year beginning the
71 first day of July, two thousand two, the commission shall
72 deposit: (1) Sixty-five million dollars into the subaccount of the
73 state excess lottery revenue fund hereby created in the state
74 treasury to be known as the "general purpose account" to be
75 expended pursuant to appropriation of the Legislature; (2) ten

76 million dollars into the education improvement fund for
77 appropriation by the Legislature to the “promise scholarship
78 fund” created in section seven, article seven, chapter eighteen-c
79 of this code; (3) twenty-five million dollars to the school
80 building debt service fund created in section six, article nine-d,
81 chapter eighteen of this code for the issuance of revenue bonds;
82 (4) fifty million dollars in the West Virginia infrastructure fund
83 created in section nine, article fifteen-a, chapter thirty-one of
84 this code to be spent in accordance with the provisions of that
85 article; (5) ten million dollars into the higher education im-
86 provement fund for higher education; and (6) nine million
87 dollars into the state park improvement fund for park improve-
88 ments. For the fiscal year beginning the first day of July, two
89 thousand three, the commission shall deposit: (1) Sixty-five
90 million dollars into the general purpose account to be expended
91 pursuant to appropriation of the Legislature; (2) seventeen
92 million dollars into the education improvement fund for
93 appropriation by the Legislature to the “promise scholarship
94 fund” created in section seven, article seven, chapter eighteen-c
95 of this code; (3) twenty-five million dollars to the school
96 building debt service fund created in section six, article nine-d,
97 chapter eighteen of this code for the issuance of revenue bonds;
98 (4) fifty million dollars in the West Virginia infrastructure fund
99 created in section nine, article fifteen-a, chapter thirty-one of
100 this code to be spent in accordance with the provisions of that
101 article; (5) ten million dollars into the higher education im-
102 provement fund for higher education; and (6) nine million
103 dollars into the state park improvement fund for park improve-
104 ments. For the fiscal year beginning the first day of July, two
105 thousand four, and subsequent fiscal years, the commission
106 shall deposit: (1) Sixty-five million dollars into the general
107 purpose account to be expended pursuant to appropriation of the
108 Legislature; (2) twenty-seven million dollars into the education
109 improvement fund for appropriation by the Legislature to the
110 “promise scholarship fund” created in section seven, article
111 seven, chapter eighteen-c of this code; (3) twenty-five million

112 dollars to the school building debt service fund created in
113 section six, article nine-d, chapter eighteen of this code for the
114 issuance of revenue bonds; (4) fifty million dollars in the West
115 Virginia infrastructure fund created in section nine, article
116 fifteen-a, chapter thirty-one of this code to be spent in accor-
117 dance with the provisions of that article; (5) ten million dollars
118 into the higher education improvement fund for higher educa-
119 tion; and (6) nine million dollars into the state park improve-
120 ment fund for park improvements.

121 (d) If the commission receives revenues in an amount that
122 is not sufficient to fully comply with the requirements of
123 subsection (c) of this section, the commission shall, after
124 providing for the distribution to the education improvement
125 fund for appropriation by the Legislature to the promise
126 scholarship fund, distribute the revenue on a pro rata basis.

127 (e) For the fiscal year beginning on the first day of July,
128 two thousand two, and each fiscal year thereafter, the commis-
129 sion shall, after meeting the requirements of subsections (c) and
130 (h) of this section, deposit fifty percent of the amount by which
131 annual gross revenue deposited in the state excess lottery
132 revenue fund exceeds two hundred twenty-five million dollars
133 in a fiscal year in a separate account in the state lottery fund to
134 be available for appropriation by the Legislature.

135 (f) When bonds are issued for the infrastructure, higher
136 education or park improvement purposes described in this
137 section that are secured by profits from lotteries deposited in
138 the state excess lottery revenue fund, the lottery director shall
139 allocate to the debt service fund created for that purpose, as a
140 third priority from the net profits of the lottery under this
141 section and section eighteen of this article for the preceding
142 month, an amount equal to one tenth of the projected annual
143 principal, interest and coverage requirements on any and all
144 revenue bonds issued, or to be issued, on or after the first day

145 of April, two thousand two, as certified to the lottery director in
146 accordance with legislation authorizing issuance of the bonds.
147 In the event there are insufficient funds available in any month
148 to transfer the amount required pursuant to this subsection, the
149 deficiency shall be added to the amount transferred in the next
150 succeeding month in which revenues are available to transfer
151 the deficiency. A third-in-priority lien on the proceeds of the
152 state lottery fund and the state excess lottery revenue fund up to
153 a maximum amount equal to the projected annual principle,
154 interest and coverage ratio requirements, not to exceed an
155 annual amount specified in legislation authorizing issuance of
156 the bonds, may be granted by the state in favor of the bonds it
157 issues which are secured by net lottery profits and state excess
158 lottery revenue.

159 (g) No portion of the distributions made as provided in
160 subsection (c) of this section may be used to pay debt service on
161 bonded indebtedness until after the Legislature expressly
162 authorizes issuance of the bonds and payment of debt service on
163 the bonds through statutory enactment or the passage of a
164 concurrent resolution by both houses of the Legislature. Until
165 subsequent legislative enactment or adoption of a resolution
166 that expressly authorizes issuance of the bonds and payment of
167 debt service on the bonds with funds distributed under subsec-
168 tion (c) of this section, the distributions may be used only to
169 fund capital improvements that are not financed by bonds and
170 only pursuant to appropriation of the Legislature.

171 (h) In fiscal year two thousand four, and thereafter, prior to
172 the distributions provided in subsection (c) of this section, the
173 lottery commission shall deposit into the general revenue fund
174 amounts necessary to provide reimbursement for the refundable
175 credit allowable under section twenty-one, article twenty-one,
176 chapter eleven of this code.

177 (i)(1) The Legislature considers the following as priorities
178 in the expenditure of any surplus revenue funds:

179 (A) Providing salary and/or increment increases for
180 professional educators and public employees;

181 (B) Providing adequate funding for the public employees
182 insurance agency; and

183 (C) Providing funding to help address the shortage of
184 qualified teachers and substitutes in areas of need, both in
185 number of teachers and in subject matters areas.

186 (2) The provisions of this subsection may not be construed
187 by any court to require any appropriation or any specific
188 appropriation or level of funding for the purposes set forth in
189 this subsection.

190 (j) The Legislature further directs the Governor to focus
191 resources on the creation of a prescription drug program for
192 senior citizens by pursuing a medicaid waiver to offer prescrip-
193 tion drug services to senior citizens; by investigating the
194 establishment of purchasing agreements with other entities to
195 reduce costs; by providing discount prices or rebate programs
196 for seniors; by coordinating programs offered by pharmaceuti-
197 cal manufacturers that provide reduced cost or free drugs; by
198 coordinating a collaborative effort among all state agencies to
199 ensure the most efficient and cost effective program possible
200 for the senior citizens of this state; and by working closely with
201 the state's congressional delegation to ensure that a national
202 program is implemented. The Legislature further directs that the
203 Governor report his progress back to the joint committee on
204 government and finance on an annual basis beginning in
205 November of the year two thousand one, until a comprehensive
206 program has been fully implemented.

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

- §29-22A-6. Video lottery terminal hardware and software requirements; hardware specifications; software requirements for randomness testing; software requirements for percentage payout; software requirements for continuation of video lottery game after malfunction; software requirements for play transaction records.
- §29-22A-10. Accounting and reporting; commission to provide communications protocol data; distribution of net terminal income; remittance through electronic transfer of funds; establishment of accounts and nonpayment penalties; commission control of accounting for net terminal income; settlement of accounts; manual reporting and payment may be required; request for reports; examination of accounts and records.
- §29-22A-10b. Distribution of excess net terminal income.
- §29-22A-10c. Surcharge; capital reinvestment fund.

§29-22A-6. Video lottery terminal hardware and software requirements; hardware specifications; software requirements for randomness testing; software requirements for percentage payout; software requirements for continuation of video lottery game after malfunction; software requirements for play transaction records.

1 (a) Video lottery terminals licensed for placement in this
2 state shall meet the following hardware specifications:

3 (1) Electrical and mechanical parts and design principles
4 may not subject a player to physical hazards or injury.

5 (2) A surge protector shall be installed on the electrical
6 power supply line to each video lottery terminal. A battery or
7 equivalent power back-up for the electronic meters shall be
8 capable of maintaining accuracy of all accounting records and
9 terminal status reports for a period of one hundred eighty days
10 after power is disconnected from the terminal. The power back-
11 up device shall be located within the locked logic board
12 compartment of the video lottery terminal.

13 (3) An on/off switch which controls the electrical current
14 used in the operation of the terminal shall be located in an
15 accessible place within the interior of the video lottery terminal.

16 (4) The operation of each video lottery terminal may not be
17 adversely affected by any static discharge or other electromag-
18 netic interference.

19 (5) A minimum of one electronic or mechanical coin
20 acceptor or other means accurately and efficiently to establish
21 credits shall be installed on each video lottery terminal. Each
22 video lottery terminal may also contain bill acceptors for one or
23 more of the following: One dollar bills, five dollar bills, ten
24 dollar bills and twenty dollar bills. All coin and bill acceptors
25 shall be approved by the commission prior to use on any video
26 lottery terminal in this state.

27 (6) Access to the interior of video lottery terminal shall be
28 controlled through a series of locks and seals.

29 (7) The main logic boards and all erasable programmable
30 read-only memory chips (EPROMS) are considered to be
31 owned by the commission and shall be located in a separate
32 locked and sealed area within the video lottery terminal.

33 (8) The cash compartment shall be located in a separate
34 locked area within or attached to the video lottery terminal.

35 (9) No hardware switches, jumpers, wire posts or any other
36 means of manipulation may be installed which alter the pay
37 tables or payout percentages in the operation of a game.
38 Hardware switches on a video lottery terminal to control the
39 terminal's graphic routines, speed of play, sound and other
40 purely cosmetic features may be approved by the commission.

41 (10) Each video lottery terminal shall contain a single
42 printing mechanism capable of printing an original ticket and
43 retaining an exact legible copy within the video lottery terminal
44 or other means of capturing and retaining an electronic copy of

45 the ticket data as approved by the commission. The following
46 information shall be recorded on the ticket when credits accrued
47 on a video lottery terminal are redeemed for cash:

48 (i) The number of credits accrued;

49 (ii) Value of the credits in dollars and cents displayed in
50 both numeric and written form;

51 (iii) Time of day and date;

52 (iv) Validation number; and

53 (v) Any other information required by the commission.

54 (11) A permanently installed and affixed identification plate
55 shall appear on the exterior of each video lottery terminal and
56 the following information shall be on the plate:

57 (i) Manufacturer of the video lottery terminal;

58 (ii) Serial number of the terminal; and

59 (iii) Model number of the terminal.

60 (12) The rules of play for each game shall be displayed on
61 the video lottery terminal face or screen. The commission may
62 reject any rules of play which are incomplete, confusing,
63 misleading or inconsistent with game rules approved by the
64 commission. For each video lottery game, there shall be a
65 display detailing the credits awarded for the occurrence of each
66 possible winning combination of numbers or symbols. A video
67 lottery terminal may allow up to five dollars to be wagered on
68 a single game. All information required by this subdivision
69 shall be displayed under glass or another transparent substance.
70 No stickers or other removable devices shall be placed on the
71 video lottery terminal screen or face without the prior approval
72 of the commission.

73 (13) Communication equipment and devices shall be
74 installed to enable each video lottery terminal to communicate
75 with the commission's central computer system by use of a
76 communications protocol provided by the commission to each
77 permitted manufacturer, which shall include information
78 retrieval and terminal activation and disable programs, and the
79 commission may require each licensed racetrack to pay the cost
80 of a central site computer as a part of the licensing requirement.

81 (14) All video lottery terminals shall have a security system
82 which temporarily disables the gaming function of the terminal
83 while opened.

84 (b) Each video lottery terminal shall have a random number
85 generator to determine randomly the occurrence of each
86 specific symbol or number used in video lottery games. A
87 selection process is random if it meets the following statistical
88 criteria:

89 (1) Chi-square test. Each symbol or number shall satisfy the
90 ninety-nine percent confidence limit using the standard chi-
91 square statistical analysis of the difference between the ex-
92 pected result and the observed result.

93 (2) Runs test. Each symbol or number may not produce a
94 significant statistic with regard to producing patterns of
95 occurrences. Each symbol or number is random if it meets the
96 ninety-nine percent confidence level with regard to the "runs
97 test" for the existence of recurring patterns within a set of data.

98 (3) Correlation test. Each pair of symbols or numbers is
99 random if it meets the ninety-nine percent confidence level
100 using standard correlation analysis to determine whether each
101 symbol or number is independently chosen without regard to
102 another symbol or number within a single game play.

103 (4) Serial correlation test. Each symbol or number is
104 random if it meets the ninety-nine percent confidence level
105 using standard serial correlation analysis to determine whether

106 each symbol or number is independently chosen without
107 reference to the same symbol or number in a previous game.

108 (c) Each video lottery terminal shall meet the following
109 maximum and minimum theoretical percentage payout during
110 the expected lifetime of the terminal:

111 (1) Video lottery games shall pay out no less than eighty
112 percent and no more than ninety-five percent of the amount
113 wagered. The theoretical payout percentage will be determined
114 using standard methods of probability theory.

115 (2) Manufacturers must file a request and receive approval
116 from the commission prior to manufacturing for placement in
117 this state video lottery terminals programmed for a payout
118 greater than ninety-two percent of the amount wagered.
119 Commission approval shall be obtained prior to applying for
120 testing of the high payout terminals.

121 (3) Each terminal shall have a probability greater than one
122 in seventeen million of obtaining the maximum payout for each
123 play.

124 (d) Each video lottery terminal shall be capable of continu-
125 ing the current game with all current game features after a video
126 lottery terminal malfunction is cleared. If a video lottery
127 terminal is rendered totally inoperable during game play, the
128 current wager and all credits appearing on the video lottery
129 terminal screen prior to the malfunction shall be returned to the
130 player.

131 (e) Each video lottery terminal shall at all times maintain
132 electronic accounting regardless of whether the terminal is
133 being supplied with electrical power. Each meter shall be
134 capable of maintaining a total of no less than eight digits in
135 length for each type of data required. The electronic meters
136 shall record the following information:

137 (1) Number of coins inserted by players or the coin equiva-
138 lent if a bill acceptor is being used or tokens or vouchers are
139 used;

140 (2) Number of credits wagered;

141 (3) Number of total credits, coins and tokens won;

142 (4) Number of credits paid out by a printed ticket;

143 (5) Number of coins or tokens won, if applicable;

144 (6) Number of times the logic area was accessed;

145 (7) Number of times the cash door was accessed;

146 (8) Number of credits wagered in the current game;

147 (9) Number of credits won in the last complete video lottery
148 game; and

149 (10) Number of cumulative credits representing money
150 inserted by a player and credits for video lottery games won but
151 not collected.

152 (f) No video lottery terminal may have any mechanism
153 which would allow the electronic accounting meters to clear
154 automatically. Electronic accounting meters may not be cleared
155 without the prior approval of the commission. Both before and
156 after any electronic accounting meter is cleared, all meter
157 readings shall be recorded in the presence of a commission
158 employee.

159 (g) The primary responsibility for the control and regulation
160 of any video lottery games and video lottery terminals operated
161 pursuant to this article rests with the commission.

162 (h) The commission shall directly or through a contract
163 with a third party vendor other than the video lottery licensee,
164 maintain a central site system of monitoring the lottery termi-

165 nals, utilizing an on-line or dial-up inquiry. The central site
166 system shall be capable of monitoring the operation of each
167 video lottery game or video lottery terminal operating pursuant
168 to this article and, at the direction of the director, immediately
169 disable and cause not to operate, any video lottery game and
170 video lottery terminal. As provided in this section, the commis-
171 sion may require the licensed racetrack to pay the cost of a
172 central site computer as part of the licensing requirement.

§29-22A-10. Accounting and reporting; commission to provide communications protocol data; distribution of net terminal income; remittance through electronic transfer of funds; establishment of accounts and nonpayment penalties; commission control of accounting for net terminal income; settlement of accounts; manual reporting and payment may be required; request for reports; examination of accounts and records.

1 (a) The commission shall provide to manufacturers, or
2 applicants applying for a manufacturer's permit, the protocol
3 documentation data necessary to enable the respective manufac-
4 turer's video lottery terminals to communicate with the com-
5 mission's central computer for transmitting auditing program
6 information and for activation and disabling of video lottery
7 terminals.

8 (b) The gross terminal income of a licensed racetrack shall
9 be remitted to the commission through the electronic transfer of
10 funds. Licensed racetracks shall furnish to the commission all
11 information and bank authorizations required to facilitate the
12 timely transfer of moneys to the commission. Licensed race-
13 tracks must provide the commission thirty days' advance notice
14 of any proposed account changes in order to assure the uninter-
15 rupted electronic transfer of funds. From the gross terminal
16 income remitted by the licensee to the commission, the com-
17 mission shall deduct an amount sufficient to reimburse the
18 commission for its actual costs and expenses incurred in

19 administering racetrack video lottery at the licensed racetrack,
20 and the resulting amount after the deduction is the net terminal
21 income. The amount deducted for administrative costs and
22 expenses of the commission may not exceed four percent of
23 gross terminal income: *Provided*, That any amounts deducted
24 by the commission for its actual costs and expenses that
25 exceeds its actual costs and expenses shall be deposited into the
26 state lottery fund. For all fiscal years beginning on or after the
27 first day of July, two thousand one, the commission shall not
28 receive an amount of gross terminal income in excess of the
29 amount of gross terminal income received during the fiscal year
30 ending on the thirtieth day of June, two thousand one, but four
31 percent of any amount of gross terminal income received in
32 excess of the amount of gross terminal income received during
33 the fiscal year ending on the thirtieth day of June, two thousand
34 one, shall be deposited into the fund established in section
35 eighteen-a, article twenty-two of this chapter.

36 (c) Net terminal income shall be divided as set out in this
37 subsection. For all fiscal years beginning on or after the first
38 day of July, two thousand one, any amount of net terminal
39 income received in excess of the amount of net terminal income
40 received during the fiscal year ending on the thirtieth day of
41 June, two thousand one, shall be divided as set out in section
42 ten-b of this article. The licensed racetrack's share is in lieu of
43 all lottery agent commissions and is considered to cover all
44 costs and expenses required to be expended by the licensed
45 racetrack in connection with video lottery operations. The
46 division shall be made as follows:

47 (1) The commission shall receive thirty percent of net
48 terminal income, which shall be paid into the state lottery fund
49 as provided in section ten-a of this article.

50 (2) Fourteen percent of net terminal income at a licensed
51 racetrack shall be deposited in the special fund established by
52 the licensee, and used for payment of regular purses in addition

53 to other amounts provided for in article twenty-three, chapter
54 nineteen of this code;

55 (3) The county where the video lottery terminals are located
56 shall receive two percent of the net terminal income: *Provided,*
57 That:

58 (A) Beginning the first day of July, one thousand nine
59 hundred ninety-nine, and thereafter, any amount in excess of
60 the two percent received during fiscal year one thousand nine
61 hundred ninety-nine by a county in which a racetrack is located
62 that has participated in the West Virginia thoroughbred devel-
63 opment fund since on or before the first day of January, one
64 thousand nine hundred ninety-nine, shall be divided as follows:

65 (i) The county shall receive fifty percent of the excess
66 amount; and

67 (ii) The municipalities of the county shall receive fifty
68 percent of the excess amount, the fifty percent to be divided
69 among the municipalities on a per capita basis as determined by
70 the most recent decennial United States census of population;
71 and

72 (B) Beginning the first day of July, one thousand nine
73 hundred ninety-nine, and thereafter, any amount in excess of
74 the two percent received during fiscal year one thousand nine
75 hundred ninety-nine by a county in which a racetrack other than
76 a racetrack described in paragraph (A) of this proviso is located
77 and where the racetrack has been located in a municipality
78 within the county since on or before the first day of January,
79 one thousand nine hundred ninety-nine, shall be divided, if
80 applicable, as follows:

81 (i) The county shall receive fifty percent of the excess
82 amount; and

83 (ii) The municipality shall receive fifty percent of the
84 excess amount; and

85 (C) This proviso shall not affect the amount to be received
86 under this subdivision by any county other than a county
87 described in paragraph (A) or (B) of this proviso;

88 (4) One half of one percent of net terminal income shall be
89 paid for and on behalf of all employees of the licensed racing
90 association by making a deposit into a special fund to be
91 established by the racing commission to be used for payment
92 into the pension plan for all employees of the licensed racing
93 association;

94 (5) The West Virginia thoroughbred development fund
95 created under section thirteen-b, article twenty-three, chapter
96 nineteen of this code and the West Virginia greyhound breeding
97 development fund created under section ten, article twenty-
98 three, chapter nineteen of this code shall receive an equal share
99 of a total of not less than one and one-half percent of the net
100 terminal income: *Provided*, That for any racetrack which does
101 not have a breeder's program supported by the thoroughbred
102 development fund or the greyhound breeding development
103 fund, the one and one-half percent provided for in this subdivi-
104 sion shall be deposited in the special fund established by the
105 licensee and used for payment of regular purses, in addition to
106 other amounts provided for in subdivision (2) of this subsection
107 and article twenty-three, chapter nineteen of this code;

108 (6) The West Virginia racing commission shall receive one
109 percent of the net terminal income which shall be deposited and
110 used as provided in section thirteen-c, article twenty-three,
111 chapter nineteen of this code;

112 (7) A licensee shall receive forty-seven percent of net
113 terminal income;

114 (8) The tourism promotion fund established in section
115 twelve, article two, chapter five-b of this code shall receive
116 three percent of the net terminal income; and

117 (9) The veterans memorial program shall receive one
118 percent of the net terminal income until sufficient moneys have
119 been received to complete the veterans memorial on the
120 grounds of the state capitol complex in Charleston, West
121 Virginia. The moneys shall be deposited in the state treasury in
122 the division of culture and history special fund created under
123 section three, article one-i, chapter twenty-nine of this code:
124 *Provided*, That only after sufficient moneys have been depos-
125 ited in the fund to complete the veterans memorial and to pay
126 in full the annual bonded indebtedness on the veterans memo-
127 rial, not more than twenty thousand dollars of the one percent
128 of net terminal income provided for in this subdivision shall be
129 deposited into a special revenue fund in the state treasury, to be
130 known as the "John F. 'Jack' Bennett Fund." The moneys in
131 this fund shall be expended by the division of veterans affairs
132 to provide for the placement of markers for the graves of
133 veterans in perpetual cemeteries in this state. The division of
134 veterans affairs shall promulgate legislative rules pursuant to
135 the provisions of article three, chapter twenty-nine-a of this
136 code specifying the manner in which the funds are spent,
137 determine the ability of the surviving spouse to pay for the
138 placement of the marker, and setting forth the standards to be
139 used to determine the priority in which the veterans grave
140 markers will be placed in the event that there are not sufficient
141 funds to complete the placement of veterans grave markers in
142 any one year, or at all. Upon payment in full of the bonded
143 indebtedness on the veterans memorial, one hundred thousand
144 dollars of the one percent of net terminal income provided for
145 in this subdivision shall be deposited in the special fund in the
146 division of culture and history created under section three,
147 article one-i, chapter twenty-nine of this code and be expended
148 by the division of culture and history to establish a West
149 Virginia veterans memorial archives within the cultural center
150 to serve as a repository for the documents and records pertain-
151 ing to the veterans memorial, to restore and maintain the
152 monuments and memorial on the capitol grounds: *Provided*,
153 *however*, That five hundred thousand dollars of the one percent

154 of net terminal income shall be deposited in the state treasury
155 in a special fund of the department of administration, created
156 under section five, article four, chapter five-a of this code to be
157 used for construction and maintenance of a parking garage on
158 the state capitol complex: *Provided further*, That the remainder
159 of the one percent of net terminal income shall be deposited in
160 equal amounts in the capitol dome and improvements fund
161 created under section two, article four, chapter five-a of this
162 code and cultural facilities and capitol resources matching grant
163 program fund created under section three, article one of this
164 chapter.

165 (d) Each licensed racetrack shall maintain in its account an
166 amount equal to or greater than the gross terminal income from
167 its operation of video lottery machines, to be electronically
168 transferred by the commission on dates established by the
169 commission. Upon a licensed racetrack's failure to maintain
170 this balance, the commission may disable all of a licensed
171 racetrack's video lottery terminals until full payment of all
172 amounts due is made. Interest shall accrue on any unpaid
173 balance at a rate consistent with the amount charged for state
174 income tax delinquency under chapter eleven of this code. The
175 interest shall begin to accrue on the date payment is due to the
176 commission.

177 (e) The commission's central control computer shall keep
178 accurate records of all income generated by each video lottery
179 terminal. The commission shall prepare and mail to the licensed
180 racetrack a statement reflecting the gross terminal income
181 generated by the licensee's video lottery terminals. Each
182 licensed racetrack shall report to the commission any discrepan-
183 cies between the commission's statement and each terminal's
184 mechanical and electronic meter readings. The licensed
185 racetrack is solely responsible for resolving income discrepan-
186 cies between actual money collected and the amount shown on
187 the accounting meters or on the commission's billing statement.

188 (f) Until an accounting discrepancy is resolved in favor of
189 the licensed racetrack, the commission may make no credit
190 adjustments. For any video lottery terminal reflecting a discrep-
191 ancy, the licensed racetrack shall submit to the commission the
192 maintenance log which includes current mechanical meter
193 readings and the audit ticket which contains electronic meter
194 readings generated by the terminal's software. If the meter
195 readings and the commission's records cannot be reconciled,
196 final disposition of the matter shall be determined by the
197 commission. Any accounting discrepancies which cannot be
198 otherwise resolved shall be resolved in favor of the commis-
199 sion.

200 (g) Licensed racetracks shall remit payment by mail if the
201 electronic transfer of funds is not operational or the commission
202 notifies licensed racetracks that remittance by this method is
203 required. The licensed racetracks shall report an amount equal
204 to the total amount of cash inserted into each video lottery
205 terminal operated by a licensee, minus the total value of game
206 credits which are cleared from the video lottery terminal in
207 exchange for winning redemption tickets, and remit the amount
208 as generated from its terminals during the reporting period. The
209 remittance shall be sealed in a properly addressed and stamped
210 envelope and deposited in the United States mail no later than
211 noon on the day when the payment would otherwise be com-
212 pleted through electronic funds transfer.

213 (h) Licensed racetracks may, upon request, receive addi-
214 tional reports of play transactions for their respective video
215 lottery terminals and other marketing information not consid-
216 ered confidential by the commission. The commission may
217 charge a reasonable fee for the cost of producing and mailing
218 any report other than the billing statements.

219 (i) The commission has the right to examine all accounts,
220 bank accounts, financial statements and records in a licensed

221 racetrack's possession, under its control or in which it has an
222 interest and the licensed racetrack shall authorize all third
223 parties in possession or in control of the accounts or records to
224 allow examination of any of those accounts or records by the
225 commission.

§29-22A-10b. Distribution of excess net terminal income.

1 (a) For all years beginning on or after the first day of July,
2 two thousand one, any amount of net terminal income generated
3 annually by a licensed racetrack in excess of the amount of net
4 terminal income generated by that licensed racetrack during the
5 fiscal year ending on the thirtieth day of June, two thousand
6 one, shall be divided as follows:

7 (1) The commission shall receive forty-one percent of net
8 terminal income, which the commission shall deposit in the
9 state excess lottery revenue fund created in section eighteen-a,
10 article twenty-two of this chapter;

11 (2) Eight percent of net terminal income at a licensed
12 racetrack shall be deposited in the special fund established by
13 the licensee, and used for payment of regular purses in addition
14 to other amounts provided for in article twenty-three, chapter
15 nineteen of this code;

16 (3) The county where the video lottery terminals are located
17 shall receive two percent of the net terminal income: *Provided,*
18 *That:*

19 (A) Any amount by which the total amount under this
20 section and subdivision three, subsection (c), section ten of this
21 article is in excess of the two percent received during fiscal year
22 one thousand nine hundred ninety-nine by a county in which a
23 racetrack is located that has participated in the West Virginia
24 thoroughbred development fund since on or before the first day

25 of January, one thousand nine hundred ninety-nine, shall be
26 divided as follows:

27 (i) The county shall receive fifty percent of the excess
28 amount; and

29 (ii) The municipalities of the county shall receive fifty
30 percent of the excess amount, the fifty percent to be divided
31 among the municipalities on a per capita basis as determined by
32 the most recent decennial United States census of population;
33 and

34 (B) Any amount by which the total amount under this
35 section and subdivision three, subsection c, section ten of this
36 article is in excess of the two percent received during fiscal year
37 one thousand nine hundred ninety-nine by a county in which a
38 racetrack other than a racetrack described in paragraph (A) of
39 this proviso is located and where the racetrack has been located
40 in a municipality within the county since on or before the first
41 day of January, one thousand nine hundred ninety-nine, shall be
42 divided, if applicable, as follows:

43 (i) The county shall receive fifty percent of the excess
44 amount; and

45 (ii) The municipality shall receive fifty percent of the
46 excess amount; and

47 (C) This proviso shall not affect the amount to be received
48 under this subdivision by any county other than a county
49 described in paragraph (A) or (B) of this proviso;

50 (4) One half of one percent of net terminal income shall be
51 paid for and on behalf of all employees of the licensed racing
52 association by making a deposit into a special fund to be
53 established by the racing commission to be used for payment

54 into the pension plan for all employees of the licensed racing
55 association;

56 (5) The West Virginia thoroughbred development fund
57 created under section thirteen-b, article twenty-three, chapter
58 nineteen of this code and the West Virginia greyhound breeding
59 development fund created under section ten, article twenty-
60 three, chapter nineteen of this code shall receive an equal share
61 of a total of not less than one and one-half percent of the net
62 terminal income: *Provided*, That for any racetrack which does
63 not have a breeder's program supported by the thoroughbred
64 development fund or the greyhound breeding development
65 fund, the one and one-half percent provided for in this subdivi-
66 sion shall be deposited in the special fund established by the
67 licensee and used for payment of regular purses, in addition to
68 other amounts provided for in subdivision (2) of this subsection
69 and article twenty-three, chapter nineteen of this code;

70 (6) The West Virginia racing commission shall receive one
71 percent of the net terminal income which shall be deposited and
72 used as provided in section thirteen-c, article twenty-three,
73 chapter nineteen of this code;

74 (7) A licensee shall receive forty-two percent of net
75 terminal income;

76 (8) The tourism promotion fund established in section
77 twelve, article two, chapter five-b of this code shall receive
78 three percent of the net terminal income; and

79 (9) One percent of the net terminal income shall be depos-
80 ited in equal amounts in the capitol dome and improvements
81 fund created under section two, article four, chapter five-a of
82 this code and cultural facilities and capitol resources matching
83 grant program fund created under section three, article one of
84 this chapter.

85 (b) The commission may establish orderly and effective
86 procedures for the collection and distribution of funds under
87 this section in accordance with the provisions of this section
88 and section ten of this article.

§29-22A-10c. Surcharge; capital reinvestment fund.

1 (a) For all fiscal years beginning on or after the first day of
2 July, two thousand one, there shall be imposed a surcharge of
3 ten percent against the excess of total net terminal income
4 generated from a licensed racetrack for that fiscal year over
5 total net terminal income from that licensed racetrack for the
6 fiscal year ending the thirtieth day of June, two thousand one.

7 (b) A capital reinvestment fund is hereby created within the
8 lottery fund. Forty-two percent of the surcharge amount
9 attributable to each racetrack shall be retained by the commis-
10 sion and deposited into a separate capital reinvestment account
11 for that licensed racetrack. For each dollar expended by a
12 licensed racetrack for capital improvements at the racetrack and
13 adjacent facilities owned by the licensee having a useful life of
14 fifteen or more years and placed in service after the first day of
15 April, two thousand one, the licensed racetrack shall receive
16 one dollar in recoupment from its capital reinvestment fund
17 account: *Provided*, That in the case of thoroughbred horse
18 tracks, four cents of every dollar in recoupment shall be spent
19 on capital improvements and upgrading in the barn area or other
20 areas at the track approved by the horsemen's benevolent and
21 protective association acting on behalf of the horsemen:
22 *Provided, however*, That in the case of greyhound race tracks,
23 four cents of every dollar in recoupment shall be spent on
24 capital improvements and upgrading in the kennel area or other
25 areas at the track approved by the racing commission. If a
26 licensed racetrack's unrecouped capital improvements exceed
27 its capital reinvestment fund account at the end of any fiscal

28 year, the excess improvements may be carried forward to three
29 subsequent fiscal years.

30 (c) Fifty-eight percent of the surcharge amount plus any
31 moneys remaining in a racetrack's capital reinvestment fund
32 account at the end of any fiscal year shall be deposited in the
33 state excess lottery revenue fund created in section eighteen-a,
34 article twenty-two of this chapter.

ARTICLE 22B. LIMITED VIDEO LOTTERY.

- §29-22B-101. Short title.
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- §29-22B-103. Exceptions.
- §29-22B-201. Legislative finding; constitutional authority; limited video lottery is a lottery.
- §29-22B-202. Legislative finding; state ownership of video lottery through outright ownership or possession of a proprietary interest in computer hardware and software.
- §29-22B-203. Legislative finding; license to participate in limited video lottery is a privilege.
- §29-22B-301. Application of definitions.
- §29-22B-302. Applicant defined.
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- §29-22B-305. Central computer, central control computer or central site system defined.
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- §29-22B-1203. Registration decals.
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- §29-22B-1205. Transportation from manufacturer and registration of video lottery terminals.
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- §29-22B-1501. Appeal of order.
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- §29-22B-1602. Civil penalties applicable to limited video lottery retailers.
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- §29-22B-1605. Civil penalties applicable to manufacturers.
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- §29-22B-1701. Financial interest of director, etc.; receiving reward from interested party; criminal penalty; application of bribery statute.
- §29-22B-1702. Criminal penalties for unlawful inducement.
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- §29-22B-1708. Criminal penalty for tampered game, terminal, device or other equipment.
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- §29-22B-1801. Video gambling machines declared contraband.
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- §29-22B-1803. Items subject to forfeiture.
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- §29-22B-1805. Procedures for forfeiture.
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- §29-22B-1807. Disposition of other forfeited property; distribution of proceeds.
- §29-22B-1901. Effect of this article on certain taxes.
- §29-22B-1902. Preemption of state laws or local regulation.
- §29-22B-1903. Timing of implementation.

PART 1. GENERAL PROVISIONS.

§29-22B-101. Short title.

- 1 This article shall be known and may be cited as the
- 2 "Limited Video Lottery Act".

§29-22B-102. Authorization for limited video lottery; regulation by lottery commission.

- 1 Limited video lottery is hereby authorized and may be
- 2 operated and maintained subject to the provisions of this article.
- 3 The limited video lottery authorized by this article, being a
- 4 lottery, is subject to regulation by the West Virginia lottery
- 5 commission.

§29-22B-103. Exceptions.

1 (a) Nothing in this article shall be construed in any way to
2 modify, amend, or otherwise affect the validity of any provi-
3 sions regulating charitable bingo and raffles as set forth in
4 articles 47-20-1, *et seq.*, and 47-21-1, *et seq.*, of this code.

5 (b) Nothing contained in this article shall be construed to
6 modify, amend, or otherwise affect the validity of any provi-
7 sions regulating racetrack video lottery as set forth in article
8 22A of this chapter.

PART 2. LEGISLATIVE FINDINGS.

§29-22B-201. Legislative finding; constitutional authority; limited video lottery is a lottery.

1 The Legislature finds and declares that:

2 (1) The constitution grants to the Legislature the authority
3 to establish, by general law, lotteries which are regulated,
4 controlled, owned and operated by the state of West Virginia;
5 and

6 (2) The limited video lottery authorized by this article is a
7 "lottery" as that term is commonly understood and as that term
8 is used in the West Virginia constitution, article 6, section 36.
9 The limited video lottery authorized as video lottery games in
10 this article is a system of lottery games that utilize advanced
11 computer technology.

§29-22B-202. Legislative finding; state ownership of video lottery through outright ownership or possession of a proprietary interest in computer hardware and software.

1 The Legislature further finds and declares that:

2 (1) The state can control, own and operate a video lottery
3 by possessing a proprietary interest in the main logic boards, all
4 erasable, programmable read-only memory chips used in any

5 video lottery equipment or games, and software consisting of
6 computer programs, documentation and other related materials
7 necessary for the video lottery system to be operated;

8 (2) The state may possess a proprietary interest in video
9 lottery game software, for purposes of this article, through
10 outright ownership or through an exclusive product license
11 agreement with a manufacturer whereby (A) the manufacturer
12 retains copyrighted ownership of the software, (B) the product
13 license granted to the state is nontransferable, and (C) the
14 agreement authorizes the state to run the software program,
15 solely for its own use, on the state's central equipment unit and
16 electronic video terminals networked to the central equipment
17 unit; and

18 (3) The state can control and regulate a video lottery if the
19 state (A) restricts licensure to a limited number of video lottery
20 terminals at qualified locations, (B) extends strict and exclusive
21 state regulation to all persons, locations, practices and associa-
22 tions related to the operation of licensed limited video lottery
23 facilities, and (C) provides comprehensive law-enforcement
24 supervision of limited video lottery activities.

**§29-22B-203. Legislative finding; license to participate in limited
video lottery is a privilege.**

1 The Legislature further finds and declares that:

2 (1) A person seeking a license or other affirmative lottery
3 commission approval has no right to a license or to the granting
4 of the approval sought. Any license issued or other commission
5 approval granted pursuant to the provisions of this article is a
6 revocable privilege;

7 (2) The licensing, control and regulation of limited video
8 lottery by the state does not create (A) any property right in a
9 license issued pursuant to this article, (B) any right to transfer
10 or encumber a license, (C) any vested right in a license, or (D)

11 the accrual of any value to the privilege of participation in any
12 limited video lottery activity; and

13 (3) That the privilege of participation in limited video
14 lottery operations is conditioned upon (A) the proper and
15 continuing individual qualification of an applicant or licensee,
16 and (B) the discharge of the affirmative responsibility of each
17 licensee to provide the regulatory and investigatory authorities
18 with any assistance and information necessary to assure that the
19 policies declared by this article are achieved.

PART 3. DEFINITIONS.

§29-22B-301. Applicability of definitions.

1 For the purposes of this article, the words or terms defined
2 in this part 3, and any variation of those words or terms
3 required by the context, have the meanings ascribed to them in
4 this part 3. These definitions are applicable unless a different
5 meaning clearly appears from the context.

§29-22B-302. Applicant defined.

1 “Applicant” means a person applying for a license required
2 by this article for lawful participation in limited video lottery.

§29-22B-303. Associated equipment defined.

1 “Associated equipment” means any hardware located on the
2 premises of video lottery retailers, other than the video lottery
3 terminals themselves, that is connected to the video lottery
4 terminal or to the central computer for the purpose of perform-
5 ing communication, validation or other functions. “Associated
6 equipment” does not include the communication equipment and
7 facilities of a regulated public utility.

§29-22B-304. Background investigation defined.

1 “Background investigation” means a security, criminal and
2 credit investigation of an applicant who has applied for the

3 issuance or renewal of a license pursuant to this article, or a
4 licensee who holds a current license.

§29-22B-305. Central computer, central control computer or central site system defined.

1 “Central computer,” “central control computer” or “central
2 site system” means any central site computer provided to and
3 controlled by the commission to which video lottery terminals
4 communicate for purposes of information retrieval and terminal
5 activation and to disable programs.

§29-22B-306. Commission or state lottery commission defined.

1 “Commission” or “state lottery commission” means the
2 West Virginia lottery commission created by article 22 of this
3 chapter.

§29-22B-307. Control defined.

1 “Control” means the authority to direct the management
2 and policies of an applicant or a license holder.

§29-22B-308. Director defined.

1 “Director” means the individual appointed by the governor
2 to provide management and administration necessary to direct
3 the state lottery office.

§29-22B-309. Disable or terminal disable defined.

1 “Disable” or “terminal disable” means the process of
2 executing a shutdown command from the central control
3 computer which causes video lottery terminals to cease func-
4 tioning.

§29-22B-310. Display defined.

1 “Display” means the visual presentation of video lottery
2 game features on the video display monitor or screen of a video
3 lottery terminal.

§29-22B-311. EPROM and erasable programmable read-only memory chips defined.

1 “EPROM” and “erasable programmable read-only memory
2 chips” means the electronic storage medium on which the
3 operation software for all games playable on a video lottery
4 terminal resides and which can also be in the form of CD-ROM,
5 flash RAM or other new technology medium that the commis-
6 sion may from time to time approve for use in video lottery
7 terminals. All electronic storage media are considered to be the
8 property of the state of West Virginia.

§29-22B-312. Identification document defined.

1 “Identification document” means a document made or
2 issued by or under the authority of the United States govern-
3 ment, a state, a political subdivision of a state, a foreign
4 government or a political subdivision of a foreign government,
5 which, when completed with information concerning a particu-
6 lar individual, is of the type intended or commonly accepted for
7 the purpose of identifying individuals.

§29-22B-313. Indirect ownership defined.

1 “Indirect ownership” means an interest a person owns in an
2 entity or in property solely as a result of application of con-
3 structive ownership rules without regard to any direct owner-
4 ship interest (or other beneficial interest) in the entity or
5 property. “Indirect ownership” shall be determined under the
6 same rules applicable to determining whether a gain or loss
7 between related parties is recognized for federal income tax
8 purposes.

§29-22B-314. License defined.

1 “License” or “video lottery license” means authorization
2 granted by the commission pursuant to this article to a person
3 permitting that person to engage in the activity for which the
4 license was issued. “License used in this article” means a
5 license issued by the commission as provided in this article that

6 has not expired or been canceled, revoked or suspended by the
7 director or the commission.

§29-22B-315. Location defined.

1 “Location” means a restricted access adult-only facility
2 located on premises in which the limited video lottery retailer
3 holds a license as provided in section 22B-501 of this article.

§29-22B-316. Limited video lottery retailer defined.

1 “Limited video lottery retailer” means a person who holds
2 either a valid license issued under article 60-7-1, *et seq.*, of this
3 code, to operate a private club, or who holds a valid Class A
4 license issued under article 11-16-1, *et seq.*, of this code, to
5 operate a business where nonintoxicating beer is sold for
6 consumption on the premises, or who holds both licenses, and
7 the person also holds a valid limited video lottery retailer’s
8 license issued under this article.

§29-22B-317. Lottery defined.

1 “Lottery” means the public gaming systems or games
2 regulated, controlled, owned and operated by the state lottery
3 commission as provided in this article and in articles 29-22-1,
4 *et seq.*, 29-22A-1, *et seq.*, and article 29-25-1, *et seq.*

§29-22B-318. Manufacturer defined.

1 “Manufacturer” means any person holding a license issued
2 under this article by the commission which allows the person to
3 engage in the business of designing, building, constructing,
4 assembling or manufacturing video lottery terminals, the
5 electronic computer components of the video lottery terminals,
6 the random number generator of the video lottery terminals, or
7 the cabinet in which the video lottery terminal is housed, and
8 whose product is intended for sale, lease or other assignment to

9 a person who is issued a permit under this article allowing the
10 person to purchase or lease video lottery terminals from a
11 manufacturer.

§29-22B-319. National criminal history background check system defined.

1 “National criminal history background check system”
2 means the criminal history record system maintained by the
3 Federal Bureau of Investigation based on fingerprint identifica-
4 tion or any other method of positive identification.

§29-22B-320. Net terminal income and gross terminal income defined.

1 “Net terminal income” means the portion of gross terminal
2 income collected by the commission from the permittees
3 determined to be net terminal income as calculated under
4 subsection 22B-1408(a) of this article. “Gross terminal income”
5 means the total amount of cash inserted into video lottery
6 terminals operated by a licensee, minus the total value of game
7 credits which are cleared from the video lottery terminals in
8 exchange for winning redemption tickets. A licensee may not
9 deduct costs or expenses related to the operation of video
10 lottery games from net terminal income.

§29-22B-321. Operator defined.

1 “Operator” means a person holding an operator’s license
2 granted under this article by the commission allowing the
3 person to: (1) Own or lease a specified number of video lottery
4 terminals from one or more manufacturers; (2) service and
5 repair those video lottery terminals; and (3) enter into contracts
6 with limited video lottery retailers for placement of those video
7 lottery terminals in a restricted access adult-only facility located
8 on the premises of the limited video lottery retailers.

§29-22B-322. Own defined.

1 “Own” means any beneficial or proprietary interest in any
2 property and includes, but is not limited to, any direct or
3 indirect beneficial or proprietary interest in any business of an
4 applicant or licensee.

§29-22B-323. Permit defined.

1 “Permit” means the authorization issued by the commission
2 allowing a person licensed as an permittee under this article to
3 own or lease a specified number of video lottery terminals.

§29-22B-324. Permittee defined.

1 “Permittee” means a licensed operator or a licensed limited
2 video lottery retailer who has a permit for video lottery termi-
3 nals issued under part 11 of this article.

§29-22B-325. Person defined.

1 “Person” means any natural person, and any corporation,
2 association, partnership, limited partnership, limited liability
3 company or other entity, regardless of its form, structure or
4 nature, other than a government agency or instrumentality.

§29-22B-326. Player defined.

1 “Player” means a person who plays a video lottery game on
2 a video lottery terminal at a restricted access adult-only facility.

§29-22B-327. Resident of this state defined.

1 “Resident of this state” means an individual who: (1)
2 Maintains a bona fide full time primary place of abode in this
3 state; (2) is not registered to vote in any other state; (3) if
4 licensed to drive, holds a valid driver’s license in this state and
5 does not hold a current driver’s license issued by any other

6 state; (4) timely filed personal income tax returns as a resident
7 of this state for the four preceding calendar years (determined
8 by including any authorized extension of time for filing the
9 return); and (5) does not claim to be a resident of any other state
10 for any purpose whatsoever.

§29-22B-328. Restricted access adult-only facility defined.

1 “Restricted access adult-only facility” means:

2 (a)(1) A private club licensed under article 60-7-1, *et seq.*,
3 of this code that is licensed under this article by the commission
4 to allow its members and their guests to play video lottery
5 games: *Provided*, That when the private club is frequented by
6 minors and their parents, video lottery terminals shall be
7 located in a separate room suitable for the location of video
8 lottery terminals with adult-only restricted access, the interior
9 of which is not visible to persons outside the room; and

10 (2) A place of business that: (A) Has a “Class A” license
11 issued under article 11-16-1, *et seq.*, of this code to sell nonin-
12 toxicating beer for consumption on the premises; (B) derives at
13 least forty percent of its annual gross receipts at that location
14 from sales of nonintoxicating beer to consumers and of such
15 sales, at least eighty percent are sales of nonintoxicating beer
16 for consumption on the premises; (C) maintains a suitable
17 kitchen and dining facility and related equipment for serving
18 meals for on-premises consumption; (D) regularly prepares and
19 sells meals for consumption on the premises; (E) has a separate
20 room suitable for the location of video lottery terminals with
21 adult-only restricted access, the interior of which is not visible
22 to persons outside the room; and (F) after meeting any addi-
23 tional standards developed by the commission to implement and
24 apply this subdivision (2), is licensed under this article by the
25 commission to allow video lottery games to be played in the
26 restricted access adult-only separate room on the premises.

27 (b) Notwithstanding the provisions of subsection (a) of this
28 section, it does not include a place of business that sells
29 petroleum products in conjunction with the sale of other retail
30 products which may include, but are not limited to, tobacco,
31 alcohol or food products; nor may such place of business
32 establish a separate room or building which is a part of,
33 contiguous to, or adjoining the place of business as a restricted
34 access adult-only facility.

§29-22B-329. Service technician defined.

1 “Service technician” means an individual who is licensed
2 under this article to service, maintain and repair video lottery
3 terminals that are registered under this article. A licensed
4 service technician may be a sole proprietor, partner, or an
5 employee of a person licensed under this article or an employee
6 of a business not licensed under this article that services,
7 maintains and repairs video lottery terminals owned or leased
8 by a permittee through one or more service technicians.

§29-22B-330. Video lottery defined.

1 “Video lottery” means a lottery that allows a game to be
2 played utilizing an electronic computer and an interactive
3 terminal device, equipped with a video screen and keys, a
4 keyboard or other equipment allowing input by an individual
5 player, into which the player inserts coins or currency as
6 consideration in order for play to be available, and through
7 which terminal device, the player may receive free games or a
8 voucher that can be redeemed for a cash or noncash prize, or
9 nothing, determined wholly or predominantly by chance.
10 “Video lottery” does not include a lottery game that merely
11 utilizes an electronic computer and a video screen to operate a
12 lottery game and communicate the results of the game and
13 which does not utilize an interactive electronic terminal device
14 allowing input by one or more players.

§29-22B-331. Video gambling machine defined.

1 (a) "Video gambling machine" means a computerized
2 device:

3 (1) That is not approved and registered by the commission
4 under the provisions of this article or used, possessed or
5 operated pursuant to and under the requirements of the provi-
6 sions of articles 29-22-1, *et seq.*, 29-22A-1, *et seq.*, 29-25-1, *et*
7 *seq.*, 47-20-1, *et seq.*, or 47-21-1, *et seq.*, or any reenactment
8 thereof;

9 (2) That employs a monitor that has a display screen,
10 software programs, graphics board, graphics card or any other
11 necessary components that give the monitor graphics capabili-
12 ties for displaying and manipulating pictures, words, numbers
13 or symbols;

14 (3) That has a storage medium containing the source
15 language or executable code of a computer program that cannot
16 be reasonably demonstrated to have any use other than, through
17 the display of pictures, words, numbers or symbols, simulating
18 the play of such games as poker, blackjack, roulette, baccarat,
19 keno, craps, or any other game of skill or chance of whatever
20 name or kind;

21 (4) That allows a person, by inserting currency, coins,
22 tokens or other similar objects into the machine, or by other-
23 wise making some payment of consideration, to make the
24 machine available for the person to play;

25 (5) That allows a person playing the machine an opportu-
26 nity to win (A) cash, (B) play credits, (C) tokens, tickets,
27 vouchers or other things that can be exchanged for cash or any
28 other thing of value, or (D) prizes, premiums, merchandise or
29 any other thing of value, whether by reason of the skill of the

30 player or by the application of the element of chance, or both;
31 and

32 (6) That can result in a payoff to a winning player automati-
33 cally from the machine or in any other manner whatsoever.

34 (b) "Video gambling machine" does not include:

35 (1) Pin ball machines;

36 (2) Automatic weighing, measuring, musical, and vending
37 machines which are designed and constructed to give a uniform
38 and fair return in value for each coin deposited and in which
39 there is no element of chance; or

40 (3) Crane machines.

41 (c) A machine described in subsection (a) of this section is
42 no less a video gambling machine because it is not in working
43 order or because some mechanical act of manipulation or repair
44 is required to accomplish its adaptation, conversion or
45 workability.

§29-22B-332. Video lottery game defined.

1 "Video lottery game" means an electronically simulated
2 game of chance that is approved, owned and controlled under
3 this article by the commission, which is displayed on the screen
4 or video monitor of a video lottery terminal and that:

5 (1) Is connected to the commission's central control
6 computer by an on-line or dial-up communication system;

7 (2) Is initiated by a player's insertion of coins or currency
8 into a video lottery terminal, which causes game play credits to
9 be displayed on the video lottery terminal and, with respect to
10 which, each game play credit entitles a player to choose one or

11 more symbols or numbers or to cause the video lottery terminal
12 to randomly select symbols or numbers;

13 (3) Allows the player to win additional game play credits
14 based upon game rules which establish the random selection of
15 winning combinations of symbols or numbers or both and the
16 number of free-play credits to be awarded for each winning
17 combination of symbols or numbers or both;

18 (4) Is based upon computer-generated random selection of
19 winning combinations based totally or predominantly on
20 chance;

21 (5) In the case of a video lottery game which allows the
22 player an option to select replacement symbols or numbers or
23 additional symbols or numbers after the game is initiated and in
24 the course of play, either: (A) Signals the player, prior to any
25 optional selection by the player of randomly generated replace-
26 ment symbols or numbers, as to which symbols or numbers
27 should be retained by the player to present the best chance,
28 based upon probabilities, that the player may select a winning
29 combination; (B) signals the player, prior to any optional
30 selection by the player of randomly generated additional
31 symbols or numbers, as to whether the additional selection
32 presents the best chance, based upon probabilities, that the
33 player may select a winning combination; or (C) randomly
34 generates additional or replacement symbols and numbers for
35 the player after automatically selecting the symbols and
36 numbers which should be retained to present the best chance,
37 based upon probabilities, for a winning combination, so that in
38 any event, the player is not permitted to benefit from any
39 personal skill, based upon a knowledge of probabilities, before
40 deciding which optional numbers or symbols to choose in the
41 course of video lottery game play;

42 (6) Allows a player at any time to simultaneously clear all
43 game play credits and print a redemption ticket entitling the
44 player to receive the cash value of the free plays cleared from
45 the video lottery terminal; and

46 (7) Does not use game themes of roulette, dice or baccarat
47 card games commonly associated with casino gambling:
48 *Provided*, That games having a video display depicting symbols
49 that appear to roll on drums to simulate a classic casino slot
50 machine, game themes of other card games and keno may be
51 used.

§29-22B-333. Video lottery terminal defined.

1 “Video lottery terminal” means a commission-approved
2 machine or device that is compatible with the lottery commis-
3 sion’s central computer system, and that is used for the purpose
4 of playing video lottery games authorized by the lottery
5 commission by no more than one player at a time.

§29-22B-334. Wager defined.

1 “Wager” means a sum of money or thing of value risked on
2 an uncertain occurrence.

PART 4. ADMINISTRATION OF LIMITED VIDEO LOTTERY.

**§29-22B-401. General authority of state lottery commission and
director; conflicts.**

1 (a) The lottery commission created by section 29-22-4 of
2 this code is authorized to implement and operate a system of
3 limited video lottery in accordance with the provisions of this
4 article and the applicable provisions of article 22 of this
5 chapter.

6 (b) The state lottery commission and the director of the
7 commission shall exercise their respective powers and perform
8 their respective duties and functions as specified in this article.

9 (c) The provisions of article 22 of this chapter apply to this
10 article, except in the event of conflict or inconsistency between
11 any of the provisions of this article and the provisions of article
12 22 of this chapter. In that event, the provisions of this article
13 shall supersede any conflicting or inconsistent provisions
14 contained in article 22 of this chapter.

§29-22B-402. Powers and duties of the state lottery commission.

1 In addition to any other powers and duties set forth in this
2 article or article 22 of this chapter, the lottery commission has
3 the following powers and duties:

4 (1) To propose legislative rules for promulgation by the
5 Legislature in accordance with the provisions of article 29A-3-
6 1, *et seq.*, of this code, governing the licensing, conduct, and
7 operation of limited video lottery that may be necessary to carry
8 out the purposes of this article. The director shall prepare and
9 submit to the lottery commission written recommendations
10 concerning proposed legislative rules for this purpose;

11 (2) To propose other rules for promulgation as provided in
12 article 29A-3-1, *et seq.*, of this code not inconsistent with this
13 article which the commission in its discretion believes to be
14 necessary. Authority to propose rules includes the authority to
15 propose amendments to rules and to propose repealing rules;

16 (3) Notwithstanding any other provision of this code to the
17 contrary, proposed legislative rules for this article filed in the
18 state register by the first day of August, 2001, may be filed as
19 emergency rules.

20 (4) To conduct hearings upon complaints charging viola-
21 tions of this article or applicable rules, and to conduct other
22 hearings as may be required by this article or rules of the lottery
23 commission;

24 (5) To enter into written agreements with the state police
25 and local law-enforcement agencies for the conduct of identifi-
26 cation and investigation of applicants, licensees or employees
27 in accordance with the provisions of this article, including, but
28 not limited to, (A) performing background investigations and
29 criminal records checks and (B) investigating possible viola-
30 tions that may be discovered as a result of an investigatory
31 process or discovered by the tax commissioner, the alcohol
32 beverage control commissioner or the lottery commission in the
33 course of conducting their respective business. Disclosure to the
34 state police or other law-enforcement officials of a possible
35 violation of this article and material facts related thereto shall
36 not be deemed to be an unauthorized disclosure of information
37 under section 11-10-5d of this code. Nothing in this section
38 prevents or impairs the state police or local law-enforcement
39 agencies from engaging in the activities set forth in this
40 subdivision on their own initiative;

41 (6) To conduct a continuous study and investigation of
42 limited video lottery throughout the state (A) to ascertain any
43 defects in this article or in legislative rules that may conflict
44 with the purposes of this article, (B) to discover any abuses in
45 the administration, control and oversight of limited video
46 lottery or (C) to discover any violation of this article or applica-
47 ble legislative rules;

48 (7) To formulate and recommend proposed legislation
49 amending this article or any applicable legislative rule so as to
50 increase the efficiency and effectiveness of this article;

51 (8) To report immediately to the governor, the speaker of
52 the House of Delegates, the president of the Senate, the
53 minority leaders of both houses, and such other state officers as
54 the lottery commission deems appropriate concerning any laws
55 which it determines may require immediate amendment to
56 prevent abuses and violations of this article or any applicable
57 rule or to remedy undesirable conditions in connection with the
58 administration or the operation of limited video lottery;

59 (9) To require such special reports from the director as it
60 considers necessary;

61 (10) To issue licenses to those involved in the ownership,
62 participation, or conduct of limited video lottery;

63 (11) To delegate to the director the authority to issue or
64 deny licenses and renewals under criteria established by the
65 commission;

66 (12) Upon complaint, or upon its own motion, to levy civil
67 penalties and to suspend or revoke licenses that the lottery
68 commission has issued for failure to comply with any applica-
69 ble provision of this article or rule of the commission;

70 (13) To establish and collect fees upon persons, licenses,
71 and gaming devices used in, or participating in, limited video
72 lottery as provided in this article or rule of the commission;

73 (14) To obtain all information from licensees and other
74 persons and agencies which the lottery commission deems
75 necessary or desirable in the conduct of its business;

76 (15) To issue subpoenas for the appearance or production
77 of persons, records, and things in connection with applications
78 before the lottery commission or in connection with disciplin-
79 ary or contested cases considered by the lottery commission;

80 (16) To apply for injunctive or declaratory relief to enforce
81 the provisions of this article and any rules promulgated pursu-
82 ant to this article;

83 (17) To impose and collect civil penalties as provided for
84 under this article;

85 (18) To inspect and examine without notice all premises
86 wherein limited video lottery is conducted or devices or
87 equipment used in limited video lottery are located, manufac-
88 tured, sold, or distributed, and to summarily seize, remove, and
89 impound, without notice or hearing from such premises any
90 equipment, devices, supplies, books, or records for the purpose
91 of examination or inspection;

92 (19) To exercise other incidental powers as may be neces-
93 sary to ensure the safe and orderly regulation of limited gaming
94 and the secure collection of all revenues, including, but not
95 limited to, taxes, fees, civil penalties and other moneys due the
96 commission;

97 (20) To establish internal control procedures for licensees,
98 including accounting procedures, reporting procedures, and
99 personnel policies;

100 (21) To establish and collect fees for performing back-
101 ground checks on all applicants for licenses and on all persons
102 with whom the commission may agree with or contract with for
103 the providing of goods or services, as the commission deems
104 appropriate;

105 (22) To establish and collect fees for performing, or having
106 performed, tests on equipment and devices to be used in limited
107 video lottery;

108 (23) To demand, at any time when business is being
109 conducted, access to and inspection, examination, photocopy-

110 ing, and auditing of all papers, books, and records of applicants
111 and licensees, on their premises or elsewhere as practicable by
112 authorized employees or agents of the commission and in the
113 presence of the licensee or his or her agent, pertaining to the
114 gross income produced by any licensed gaming establishment
115 and to require verification of income, and all other matters
116 affecting the enforcement of the policies of the lottery commis-
117 sion or any provision of this article; and to impound or remove
118 all papers, books, and records of applicants and licensees,
119 without hearing, for inspection or examination; and

120 (24) To prescribe voluntary alternative methods for the
121 making, filing, signing, subscribing, verifying, transmitting,
122 receiving, or storing of returns, writings or other documents.

§29-22B-403. Powers and duties of the director.

1 In addition to the duties imposed upon the director else-
2 where in this article and article 22 of this chapter, the director
3 shall:

4 (1) Supervise and administer the operation of licensed
5 limited video lottery in accordance with the provisions of this
6 article and the rules of the lottery commission;

7 (2) Issue licenses to manufacturers, operators, limited video
8 lottery retailers and service technicians, after approval by the
9 lottery commission;

10 (3) Register video lottery terminals and equipment and
11 issue registration decals;

12 (4) Collect and deposit license and registration fees due
13 under this article;

14 (5) Require the mandatory posting by limited video lottery
15 retailers of the rules of play and the odds or house percentage
16 on each video lottery game;

17 (6) Attend meetings of the lottery commission or appoint a
18 designee to attend in the director's place;

19 (7) Employ and direct such personnel as may be necessary
20 to carry out the purposes of this article, but no person shall be
21 employed who has been convicted of a felony or gam-
22 bling-related offense;

23 (8) With the approval of the lottery commission, enter into
24 agreements with any department, agency, or unit of state
25 government to secure services which the director deems
26 necessary and to provide for the payment for such services;

27 (9) Employ and compensate such consultants and technical
28 assistants as may be required and as otherwise permitted by
29 law;

30 (10) Confer with the lottery commission as necessary or
31 desirable, with regard to the operation of the division;

32 (11) Make available for inspection by the lottery commis-
33 sion or any member of the commission, upon request, all books,
34 records, files, and other information and documents in the
35 director's office;

36 (12) Advise the lottery commission and recommend to the
37 commission such rules and other procedures as the director
38 deems necessary and advisable to improve the operation of
39 limited video lottery;

40 (13) With the concurrence of the lottery commission or
41 pursuant to commission requirements and procedures, enter into
42 contracts for materials, equipment, and supplies;

43 (14) Make a continuous study and investigation of the
44 operation and the administration of similar laws which may be
45 in effect in other states or countries; of any literature on video
46 gaming which from time to time may be published or available;
47 and of any federal laws which may affect the conduct of limited
48 video lottery in this state with a view to recommending or
49 effecting changes that would serve the purposes of this article;

50 (15) Publish as a public document a monthly report that
51 contains a full and complete statement of the revenue and
52 expenses for each month from limited video lottery operations;

53 (16) Provide copies of the monthly revenue and expense
54 statement to the lottery commission, the secretary of the
55 department of tax and revenue, the governor, the speaker of the
56 house of delegates, the president of the senate, and the minority
57 leaders of both houses of the Legislature; and

58 (17) Perform any other acts that the lottery commission
59 finds are necessary or desirable in order to carry out the
60 purposes of this article.

§29-22B-404. Advertising by commission or director prohibited.

1 Neither the commission nor the director may conduct video
2 lottery advertising or promotional activities to promote or
3 advertise limited video lottery authorized by this article.

PART 5. REQUIREMENTS AND QUALIFICATIONS FOR LICENSURE.

§29-22B-501. Types of licenses issued for participation in limited video lottery activities.

1 (a) The lottery commission may issue four types of limited
2 video lottery licenses, as follows:

3 (1) A manufacturer's license;

4 (2) An operator's license;

5 (3) A limited video lottery retailer's license; and

6 (4) A service technician's license.

7 (b) A manufacturer's license is required for all persons who
8 act as a manufacturer as defined in section 22B-319 of this
9 article.

10 (c) An operator's license is required for all persons who
11 engage in the business of placing and operating video gaming
12 machines on the premises of a retailer. A licensed operator and
13 a licensed limited video lottery retailer who hold a permit
14 issued under part 11 of this article may obtain video lottery
15 terminals only from a licensed manufacturer.

16 (d) A video lottery retailer's license is required for all
17 persons conducting limited video lottery on their premises.
18 Each person licensed as a retailer shall have and maintain sole
19 and exclusive legal possession of the entire premises for which
20 the retail license is issued.

21 (e) Each license issued pursuant to this section expires one
22 year from the date of its issuance but may be successively
23 renewed upon the filing and approval of an application for
24 renewal, except as otherwise provided in this article.

**§29-22B-502. General qualifications for all types of limited video
lottery licenses.**

1 No limited video lottery license or license renewal may be
2 granted unless the lottery commission has determined that the
3 applicant satisfies all of the following qualifications:

4 (1) The applicant is a person of good character, honesty and
5 integrity;

6 (2) The applicant is a person whose background, criminal
7 record, if any, reputation, habits and associations, do not
8 threaten to (A) compromise the public interest of the citizens of
9 the state, (B) weaken the effective regulation and control of
10 video gaming, (C) breach the security and integrity of the
11 lottery, or (D) introduce corrupt, unfair, or illegal practices,
12 methods and activities into the operation of video gaming or the
13 business or financial transactions incidental to the operation of
14 video gaming;

15 (3) The applicant has not been convicted of any violation of
16 this article, article 19-23-1, *et seq.*, of this code, articles 22, 22A
17 or 25 of this chapter, or any felony related to theft, bribery,
18 gambling or involving moral turpitude in this or in any other
19 state or foreign country;

20 (4) The applicant has disclosed to the lottery commission
21 the identity of each person who has control of the applicant, as
22 control is described in section 22B-507, and those persons
23 satisfy all qualifications required by this section and any
24 applicable qualifications required by sections 22B-503 through
25 22B-506;

26 (5) The applicant has provided a set of fingerprints and has
27 completed and signed the statement provided for in section
28 22B-602;

29 (6) The applicant has furnished all information, including
30 financial data and documents, certifications, consents, waivers,
31 individual history forms and other materials requested by the
32 lottery commission for purposes of determining qualifications
33 for a license.

§29-22B-503. Additional qualifications for an applicant for an operator's license.

1 (a) No operator's license or license renewal may be granted
2 unless the lottery commission has determined that, in addition
3 to the general requirements set forth in section 22B-502, the
4 applicant satisfies all of the following qualifications:

5 (1)(A) If the applicant is an individual, the applicant has
6 been a citizen of the United States and a resident of this state
7 for the four year period immediately preceding the application;
8 or

9 (B) If the applicant is a corporation, partnership or other
10 business entity, the chief executive officer and the majority of
11 the officers, directors, members and partners (to the extent each
12 of these groups exists with respect to a particular business
13 organization), both in number and percentage of ownership
14 interest, have been citizens of the United States and residents of
15 this state for the four year period immediately preceding the
16 application.

17 (2) The applicant has demonstrated the training, education,
18 business ability and experience necessary to establish, operate
19 and maintain the business for which the license application is
20 made;

21 (3) The applicant has secured any necessary financing for
22 the business for which the license application is made, and the
23 financing (A) is from a source that meets the qualifications of
24 this section and (B) is adequate to support the successful
25 performance of the duties and responsibilities of the licensee.
26 A licensee shall request commission approval of any change in
27 financing or leasing arrangements at least thirty days before the
28 effective date of the change;

29 (4) The applicant has disclosed all financing or refinancing
30 arrangements for the purchase, lease or other acquisition of
31 video lottery terminals and associated equipment in the degree
32 of detail requested by the lottery commission;

33 (5) The applicant has filed with the lottery commission a
34 copy of any current or proposed agreement between the
35 applicant and any manufacturer for the sale, lease or other
36 assignment to the operator of video lottery terminals, the
37 electronic computer components of the terminals, the random
38 number generators of the terminals, or the cabinets in which
39 they are housed; and

40 (6) The applicant does not hold any other license under this
41 article, article 19-23-1, *et seq.*, of this code, or articles 22, 22A
42 or 25 of this chapter, except that an applicant may also be
43 licensed as a service technician.

44 (b)(1) A person or a member of his or her immediate family
45 who has an ownership interest in a business entity that submits
46 an application for an operator's license may not (A) submit an
47 application for another operator's license as an individual, (B)
48 serve as an officer, director, member or partner of a business
49 entity that submits an application for another operator's license,
50 or (C) have an ownership interest in any other business entity
51 that submits an application for an operator's license.

52 (2) Business entities that have common owners or common
53 officers, directors, members or partners may not hold more than
54 one operator's license.

**§29-22B-504. Additional qualifications for an applicant for a
limited video lottery retailer's license.**

1 No limited video lottery retailer's license or license renewal
2 may be granted unless the lottery commission has determined
3 that, in addition to the general requirements set forth in section
4 22B-502, the applicant satisfies all of the following qualifica-
5 tions:

6 (1)(A) If the applicant is an individual, the applicant has
7 been a citizen of the United States and a resident of this state
8 for the four year period immediately preceding the application;

9 (B) If the applicant is a corporation, partnership or other
10 business entity, the chief executive officer and the majority of
11 the officers, directors, members and partners (to the extent each
12 of these groups exists with respect to a particular business
13 organization), both in number and percentage of ownership
14 interest, have been citizens of the United States and residents of
15 this state for the four year period immediately preceding the
16 application;

17 (2) The applicant has disclosed to the lottery commission
18 the identity of each person who has control of the applicant, as
19 control is described in section 22B-507;

20 (3) The applicant holds either (A) a valid license issued
21 under article 60-7-1, *et seq.*, of this code to operate a private
22 club, (B) a valid Class A license issued under article 11-16-1,
23 *et seq.*, of this code to operate a business where nonintoxicating
24 beer is sold for consumption on the premises, or (C) both
25 licenses;

26 (4) The applicant has demonstrated the training, education,
27 business ability and experience necessary to establish, operate
28 and maintain the business for which the license application is
29 made;

30 (5) The applicant has secured any necessary financing for
31 the business for which the license application is made, and the
32 financing (A) is from a source that meets the qualifications of
33 this section and (B) is adequate to support the successful
34 performance of the duties and responsibilities of the licensee;

35 (6) The applicant has disclosed all financing or refinancing
36 arrangements for placement on the applicant's premises of

37 video lottery terminals and associated equipment in the degree
38 of detail requested by the lottery commission;

39 (7) The applicant has filed with the lottery commission a
40 copy of any current or proposed agreement between the
41 applicant and a licensed operator for the placement on the
42 applicant's premises of video lottery terminals;

43 (8) The applicant has filed with the lottery commission a
44 copy of any current or proposed agreement between the
45 applicant and a licensed operator or other person for the
46 servicing and maintenance of video lottery terminals by
47 licensed service technicians; and

48 (9) The applicant does not hold any other license under this
49 article, article 19-23-1, *et seq.*, of this code, or articles 22, 22A
50 or 25 of this chapter, except that an applicant may also be
51 licensed as a service technician.

**§29-22B-505. Additional qualifications for an applicant for a
service technician's license.**

1 No service technician's license or license renewal may be
2 granted unless the lottery commission has determined that, in
3 addition to the general requirements set forth in section 22B-
4 502, the applicant has passed a technical competence test
5 administered or approved by the lottery commission.

**§29-22B-506. Additional qualifications for an applicant for a
manufacturer's license.**

1 No manufacturer's license or license renewal may be
2 granted unless the lottery commission has determined that, in
3 addition to the general requirements set forth in section 22B-
4 502, the applicant satisfies all of the following qualifications:

5 (1) The applicant has obtained, or can obtain, certification
6 of compliance under the provisions of part 15 of the federal
7 communications commission rules for all video lottery termi-
8 nals placed in this state;

9 (2) The applicant has demonstrated the capacity to manu-
10 facture terminals and associated equipment for placement in
11 this state in accordance with the specifications and procedures
12 set forth in part 9 of this article;

13 (3) The applicant has demonstrated the ability to maintain
14 and provide an inventory of spare parts so as to assure the
15 timely repair and continuous operation of licensed video lottery
16 terminals placed in this state; and

17 (4) The applicant has demonstrated the capacity to timely
18 deliver video lottery terminals and associated equipment to
19 licensed operators and licensed limited video lottery retailers
20 who hold permits issued under part 11 of this article to own or
21 lease video lottery terminals from licensed manufacturers.

**§29-22B-507. Persons having control of an applicant for a limited
video lottery license.**

1 The following persons are considered to have control of an
2 applicant:

3 (1) Each person associated with a corporate applicant,
4 including any corporate holding company, parent company or
5 subsidiary company of the applicant, but not including a bank
6 or other licensed lending institution which holds a mortgage or
7 other lien acquired in the ordinary course of business, who has
8 the ability to control the activities of the corporate applicant or
9 elect a majority of the board of directors of that corporation.

10 (2) Each person associated with a noncorporate applicant
11 who directly or indirectly holds any beneficial or proprietary

12 interest in the applicant or who the commission determines to
13 have the ability to control the applicant.

14 (3) Key personnel of an applicant, including any executive,
15 employee or agent, having the power to exercise significant
16 influence over decisions concerning any part of the applicant's
17 business operation.

§29-22B-508. Commission action on applications.

1 (a) The commission may not issue any license until after
2 the background investigations are concluded. This provision
3 shall not apply to an application for renewal of a license except
4 to the extent background investigations are required of an
5 applicant for renewal of a license in legislative rules of the
6 commission.

7 (b) The commission shall make an affirmative determina-
8 tion that the applicant is qualified and that the applicable
9 license fees have been paid prior to issuing any license.

§29-22B-509. Incomplete application not to be considered.

1 (a) The lottery commission shall notify the applicant in
2 writing if an application is incomplete and the notification shall
3 state the deficiencies in the application.

4 (b) The commission may not consider incomplete applica-
5 tions. The commission may consider an application when the
6 applicant has completed and executed all forms and documents
7 required by the commission and all application fees and costs
8 have been paid.

§29-22B-510. Burden of proving qualification for license.

1 The burden of proving qualification for any limited video
2 lottery license or for renewal thereof is on the applicant.

§29-22B-511. Issuance of order refusing to issue or renew license, or suspending or revoking same.

1 (a) The commission shall notify applicants and licensees in
2 writing of the denial, suspension or revocation of a license and
3 the reasons for the denial, suspension or revocation in accor-
4 dance with the provisions of section 22B-518.

5 (b) An applicant may request a hearing to review a license
6 denial, suspension or revocation in accordance with part 15 of
7 this article.

§29-22B-512. Review of continuing eligibility for license.

1 The lottery commission shall determine on a continuing
2 basis the eligibility of licensees to hold a license. Notwithstand-
3 ing any other provision of this article, each operator and limited
4 video lottery retailer shall meet the residency requirements in
5 sections 22B - 503 and 22B - 504 of this article and shall be a
6 resident of this state during the period in which the licensed
7 issued for the operator or limited video lottery retailer is in
8 effect.

§29-22B-513. Application forms and other documents.

1 (a) The commission shall determine the forms of applica-
2 tion to be used.

3 (b) All application, registration and disclosure forms and
4 other documents submitted to the lottery commission by or on
5 behalf of the applicant for purposes of determining qualification
6 for a video lottery license shall be sworn to or affirmed before
7 an officer qualified to administer oaths.

§29-22B-514. Failure to reveal material fact; false or misleading material.

1 (a) An applicant who knowingly fails to reveal any fact that
2 is material to qualification or who knowingly submits false or
3 misleading material information is ineligible for a video lottery
4 license.

5 (b) An applicant who is awarded a license or renewal of a
6 license shall give the commission written notification of any
7 material change in the information previously submitted in or
8 with the application for the license or for renewal thereof,
9 whichever is the most recent document filed with the commis-
10 sion, within thirty days after the material change occurs or the
11 licensee becomes aware of the material change, whichever
12 event occurs last.

§29-22B-515. Bonding requirements for operators and limited video lottery retailers who are permittees.

1 Before any operator or limited video lottery retailer is
2 issued a permit under part 11 of this article to own or lease
3 video lottery terminals from a licensed manufacturer, the
4 permittee shall post a bond or irrevocable letter of credit in a
5 manner and in an amount established by the commission. The
6 bond must be issued by a surety company authorized to transact
7 business in West Virginia and the company must be approved
8 by the insurance commission of this state as to solvency and
9 responsibility. A permittee who is a video lottery retailer that
10 has permits for two or more restricted access adult-only
11 facilities may post a blanket bond.

§29-22B-516. Applicant bears the risk of adverse publicity.

1 Each applicant bears all risks of adverse public notice,
2 embarrassment, criticism, damages or financial loss which may
3 result from any disclosure or publication of any material or
4 information obtained by the lottery commission pursuant to
5 action on an application. The applicant shall, as a part of its
6 application, expressly waive any and all claims against the

7 lottery commission, the state of West Virginia and the employ-
8 ees of either for damages as a result of any background investi-
9 gation, disclosure or publication relating to an application for
10 a video lottery license or permit.

§29-22B- 517. Renewal of licenses.

1 The commission shall renew video lottery licenses annually
2 on a date set by the commission, if each person seeking license
3 renewal submits the applicable renewal fee, completes all
4 renewal forms provided by the commission, and continues to
5 meet all qualifications for a license.

§29-22B- 518. Annual license fees.

1 (a) The following license fees shall be paid annually by
2 each licensed operator, manufacturer, service technician or
3 limited video lottery retailer:

4 (1) Operator: \$10,000;

5 (2) Manufacturer: \$10,000;

6 (3) Service technician: \$100;

7 (4) Limited video lottery retailer: \$500.

8 (b) The applicable fee shall be paid to the commission at
9 the time the application for a license is submitted to the
10 commission and upon the annual renewal date each year
11 thereafter, at which time the license may be renewed.

12 (c) A manufacturer who ceases supplying any additional
13 video lottery terminals to permittees in this state may continue
14 to supply repair parts and service for video lottery terminals
15 previously provided to permittees, if an annual renewal fee of
16 one thousand dollars is paid and the manufacturer is otherwise
17 eligible for licensure under this article.

18 (d) License fees collected under this section shall be
19 deposited in the fund established in section 29-22-18a.

PART 6. BACKGROUND INVESTIGATIONS.

§29-22B-601. Establishment of procedures for background investigations.

1 (a) The lottery commission, through a cooperative agree-
2 ment with the state police, shall establish procedures for
3 conducting background investigations for the purpose of
4 determining whether an applicant has been charged with,
5 indicted for, or convicted of a crime that may have bearing
6 upon the applicant's fitness to hold a license under this article.

7 (b) A background investigation must include, but not be
8 limited to, (1) accessing the national criminal history back-
9 ground check system as defined in section 22B-319 and (2)
10 reviewing any other readily accessible state or federal criminal
11 history records that may be pertinent to the background
12 investigation.

13 (c) The state police shall make a determination whether the
14 applicant has been convicted of, or is under pending indictment
15 for, a crime that bears upon the applicant's fitness to hold a
16 license under this article and shall convey that determination to
17 the lottery commission.

§29-22B-602. Responsibility of state police in conducting back- ground investigations.

1 The state police shall establish and maintain an adequate
2 system for background investigations that:

3 (1) Ensures that timely background investigations are
4 conducted on applicants for limited video lottery licenses,
5 current licensees, and other persons required to be investigated

6 by the lottery commission in accordance with the provisions of
7 this article or by legislative rules promulgated pursuant to this
8 article;

9 (2) Provides for review and oversight of applicants, current
10 licensees, and other persons on an ongoing basis;

11 (3) Provides that upon receipt of a background check report
12 lacking disposition data, further research will be conducted in
13 whatever state and local recordkeeping systems are available in
14 order to obtain complete data;

15 (4) Provides for prompt notification to the lottery commis-
16 sion of the results of background investigations before the
17 issuance or renewal of any of license; and

18 (5) Clearly defines a standard whereby a person's prior
19 activities, criminal record, if any, or reputation, habits and
20 associations are such as to pose a threat to the public interest or
21 to the effective regulation of limited video lottery, or create or
22 enhance the dangers of unsuitable, unfair, or illegal practices
23 and methods and activities in the conduct of gaming, thereby
24 rendering that person ineligible for licensing.

§29-22B-603. Guidelines for background investigations.

1 The lottery commission may not request a background
2 check of an applicant under section 22B-601 of this article
3 unless the applicant first provides a set of fingerprints and
4 completes and signs a statement that:

5 (1) Contains the name, address, and date of birth appearing
6 on a valid identification document (as defined in section 22B-
7 312 of this article) of the applicant;

8 (2) Declares that the applicant has not been convicted of a
9 crime or, if the applicant has been convicted of a crime,

10 contains a description of the crime and the particulars of the
11 conviction. For the purposes of this section, an applicant has not
12 been convicted of a crime if he or she was convicted of a non-
13 moving motor vehicle violation or a speeding violation that
14 does not arise in connection with a motor vehicle collision;

15 (3) Notifies the applicant that the lottery commission will
16 request a background check under section 22B-601 of this
17 article; and

18 (4) Notifies the applicant of the applicant's rights under
19 section 22B-604 of this article.

§29-22B-604. Applicant's rights regarding background investigations.

1 Each applicant who is the subject of a background check is
2 entitled to a copy of his or her background investigation report,
3 and has the right to challenge the accuracy and completeness of
4 any information contained in the report and to obtain a prompt
5 determination as to the validity of the challenge before a final
6 determination is made by the lottery commission that would
7 deny issuance of a license or renewal of a license.

PART 7. DUTIES AND RESPONSIBILITIES OF LICENSEES.

§29-22B-701. General duties of all licensees.

1 All video lottery license holders shall:

2 (1) Promptly report to the commission any facts or circum-
3 stances related to video lottery operations that constitute a
4 violation of state or federal law;

5 (2) Conduct all video lottery activities and functions in a
6 manner that does not pose a threat to the public health, safety or

7 welfare of the citizens of this state, and which does not ad-
8 versely affect the security or integrity of the lottery;

9 (3) Hold the commission and this state harmless from and
10 defend and pay for the defense of any and all claims that may
11 be asserted against a license holder, this state or the commission
12 and its employees arising from the license holder's participation
13 in the video lottery system authorized by this article;

14 (4) Assist the commission in maximizing video lottery
15 revenues;

16 (5) Maintain all records required by the commission;

17 (6) Upon request by the commission or any designated
18 agent of the commission, provide the commission access to all
19 records and the physical premises of the business or businesses
20 where the license holder's video lottery activities occur, for the
21 purpose of monitoring or inspecting the license holder's
22 activities and the video lottery games, video lottery terminals
23 and associated equipment;

24 (7) Keep current in all payments and obligations to the
25 commission; and

26 (8) Notify the commission in writing of any proposed
27 change of ownership or control of the license holder and of all
28 other transactions or occurrences relevant to license qualifica-
29 tion, and receive commission approval prior to any change of
30 ownership or control of a licensed manufacturer, operator or
31 limited video lottery retailer.

§29-22B-702. Additional duties of limited video lottery retailers.

1 In addition to the general duties imposed on all licensees in
2 section 22B-701, a limited video lottery retailer shall:

3 (1) Attend all commission mandated meetings, seminars
4 and training sessions concerning operation of video lottery
5 terminals, the validation and redemption of video lottery
6 winning tickets and the operation of all ticket validation
7 terminals and equipment;

8 (2) Maintain all skills necessary for the accurate validation
9 of video lottery tickets;

10 (3) Supervise video lottery operations and ticket validation
11 procedures at the applicable location;

12 (4) Permit no person to tamper with or interfere with the
13 operation of any video lottery terminal;

14 (5) Ensure that telephone lines from the commission's
15 central control computer to the video lottery terminals located
16 at the approved location are at all times connected, and prevent
17 any person from tampering or interfering with the operation of
18 the telephone lines;

19 (6) Ensure that video lottery terminals are within the sight
20 and control of designated employees of the limited video lottery
21 retailer;

22 (7) Ensure that video lottery terminals are placed and
23 remain placed in the specific locations which have been
24 approved by the commission. A video lottery terminal in a
25 restricted access adult-only facility may not be relocated within
26 the facility without the prior written approval of the commis-
27 sion;

28 (8) Monitor video lottery terminals to prevent access to or
29 play by persons who are under the age of twenty-one years or
30 who are visibly intoxicated;

31 (9) Maintain at all times sufficient change and cash in the
32 denominations accepted by the video lottery terminals;

33 (10) Provide no access by a player to an automated teller
34 machine (ATM) in the restricted access adult-only facility
35 where video lottery games are played, accept no credit card or
36 debit card from a player for the exchange or purchase of video
37 lottery game credits or for an advance of coins or currency to be
38 utilized by a player to play video lottery games and extend no
39 credit, in any manner, to a player so as to enable the player to
40 play a video lottery game;

41 (11) Pay for all credits won upon presentment of a valid
42 winning video lottery ticket;

43 (12) Report promptly in writing to the operator and the
44 commission all video lottery terminal malfunctions and notify
45 the commission in writing of the failure of an operator or
46 service technician to provide prompt service and repair of the
47 terminals and associated equipment;

48 (13) Conduct no video lottery advertising or promotional
49 activities;

50 (14) Not use the words "video lottery" in the name of the
51 approved location, or in any directions or advertising visible
52 from outside the retailer's establishment;

53 (15) Install, post and display prominently within or about
54 the approved location signs, redemption information and other
55 promotional material as required by the commission;

56 (16) Permit video lottery to be played only during those
57 hours established and approved by the commission: *Provided*,
58 That the limited video lottery retailer shall not permit video
59 lottery to be played beyond the hour during which liquor may
60 be served;

61 (17) Contract with no more than one licensed operator for
62 the placement of video lottery terminals at the licensed location;

63 (18) Maintain insurance covering all losses as the result of
64 fire, theft or vandalism to video lottery terminals and associated
65 equipment; and

66 (19) Comply with all applicable provisions of this article
67 and rules and orders of the commission.

**§29-22B-703. Additional duties of limited video lottery retailers
who are permittees.**

1 In addition to the general duties imposed on all licensees in
2 section 22B-701 and the additional duties imposed on all
3 limited video lottery retailers in section 22B-702, a limited
4 video lottery retailer who is a permittee shall:

5 (1) Acquire video lottery terminals by purchase, lease or
6 other assignment only from licensed manufacturers;

7 (2) Acquire no video lottery terminals in excess of the
8 number he or she is authorized to operate in this state as stated
9 in the permit issued under part 11 of this article;

10 (3) Pay for the installation and operation of commission
11 approved telephone lines to provide direct dial-up or on-line
12 communication between each video lottery terminal and the
13 commission's central control computer;

14 (4) Purchase or lease and install computer controller units
15 and other associated equipment required by the commission for
16 video lottery terminals owned or leased by the permittee;

17 (5) Ensure that telephone lines from the commission's
18 central control computer to the video lottery terminals located
19 at the approved location are at all times connected, and prevent

20 any person from tampering or interfering with the operation of
21 the telephone lines;

22 (6) Assume financial responsibility for proper and timely
23 payments of all credits awarded to players in accordance with
24 legislative rules promulgated by the commission;

25 (7) Enter into contracts with a licensed operator, licensed
26 manufacturer or other businesses to provide for the maintenance
27 and repair of video lottery terminals and associated equipment
28 only by individuals who are licensed service technicians or
29 employ one or more licensed service technicians, and to provide
30 for the placement of video lottery terminals pursuant to the
31 provisions of this article;

32 (8) Promptly notify the commission in writing of any
33 breaks or tears to any logic unit seals;

34 (9) Assume liability for all amounts due to the commission
35 in connection with any money lost or stolen from any video
36 lottery terminal; and

37 (10) Maintain a separate bank account into which the
38 limited video lottery retailer shall deposit the gross terminal
39 income from all of the limited video lottery retailer's video
40 lottery terminals.

**§29-22B-704. Duties of limited video lottery retailer regarding
payment of credits.**

1 (a) A limited video lottery retailer shall not make payment
2 for credits awarded on a video lottery terminal unless the ticket
3 meets the following requirements:

4 (1) The ticket is fully legible and printed on paper approved
5 by the commission and the ticket contains all information
6 required by this article;

7 (2) The ticket is not mutilated, altered, unreadable or
8 tampered with in any manner;

9 (3) The ticket is not counterfeit, in whole or in part; and

10 (4) The ticket is presented by a person authorized to play
11 video lottery pursuant to this article.

12 (b) Each limited video lottery retailer shall redeem tickets
13 during the business hours of operation. Credits shall be immedi-
14 ately paid in cash or by check when a player presents a valid
15 ticket for payment. No credits may be paid in tokens, chips or
16 merchandise. The limited video lottery retailer is responsible
17 for all income tax reporting of prize payments paid to players
18 above the threshold set by the United States Internal Revenue
19 Service.

20 (1) A limited video lottery retailer may not redeem tickets
21 for credits awarded on a video lottery terminal that is not
22 located on its premises;

23 (2) A ticket must be presented for payment no later than ten
24 days after the date the ticket is printed. The commission is not
25 liable for the payment of any video lottery ticket credits.

26 (c) A limited video lottery retailer shall deface all redeemed
27 tickets in a manner that prevents any subsequent presentment
28 and payment.

29 (d) The commission is not responsible for any video lottery
30 terminal malfunction that causes a credit to be wrongfully
31 awarded or denied to players. The permittee is solely responsi-
32 ble for any wrongful award or denial of credits.

§29-22B-705. Additional duties of manufacturers.

1 In addition to the general duties imposed on all licensees in
2 section 22B-701 of this article, a manufacturer shall:

- 3 (1) Manufacture terminals and associated equipment for
4 placement in this state in accordance with the specifications and
5 procedures specified in part 9 of this article;
- 6 (2) Manufacture terminals and associated equipment to
7 ensure timely delivery to licensed permittees;
- 8 (3) Maintain and provide an inventory of spare parts to
9 assure the timely repair and continuous operation of licensed
10 video lottery terminals intended for placement in this state;
- 11 (4) Pay no compensation of any kind to any limited video
12 lottery retailer or give or transfer anything of value to any
13 limited video lottery retailer, beyond a nominal consideration
14 of one dollar per year;
- 15 (5) Provide to licensed permittees technical assistance and
16 training in the service and repair of video lottery terminals and
17 associated equipment so as to assure the continuous authorized
18 operation and play of the video lottery terminals;
- 19 (6) Obtain certification of compliance under the provisions
20 of part fifteen of the federal communication commission rules
21 for all video lottery terminals placed in this state;
- 22 (7) Comply with all applicable provisions of this article and
23 rules and orders of the commission; and
- 24 (8) Sell or lease video lottery terminals or associated
25 equipment to a permittee who is a limited lottery retailer under
26 terms and conditions that are no more favorable than the terms
27 and conditions under which similar terminals or equipment are
28 generally sold or leased to permittees who are licensed opera-
29 tors.

§29-22B-706. Additional duties of operators.

- 1 In addition to the general duties imposed on all licensees in
2 section 22B-701 of this article, an operator shall:

3 (1) Acquire video lottery terminals by purchase, lease or
4 other assignment only from licensed manufacturers;

5 (2) Acquire no video lottery terminals in excess of the
6 number they are authorized to operate in this state as stated in
7 the permit issued under part 11 of this article;

8 (3) Contract with limited video lottery retailers for a secure
9 location for the placement, operation and play of the video
10 lottery terminals;

11 (4) Pay no compensation of any kind to any limited video
12 lottery retailer or give or transfer anything of value to any
13 limited video lottery retailer, that is in addition to the consider-
14 ation stated in the written agreement between the operator and
15 the limited video lottery retailer, which may be not less than
16 forty percent nor more than fifty percent of the amount of net
17 terminal income received by the operator in connection with the
18 video lottery terminals at that location;

19 (5) Pay for the installation and operation of commission
20 approved telephone lines to provide direct dial-up or on-line
21 communication between each video lottery terminal and the
22 commission's central control computer;

23 (6) Purchase or lease and install computer controller units
24 and other associated equipment required by the commission for
25 video lottery terminals owned or leased by the permittee;

26 (7) Permit no person to tamper with or interfere with the
27 operation of any video lottery terminal;

28 (8) Ensure that telephone lines from the commission's
29 central control computer to the video lottery terminals located
30 at the approved location are at all times connected, and prevent
31 any person from tampering or interfering with the operation of
32 the telephone lines;

33 (9) Ensure that video lottery terminals are placed and
34 remain placed in the specific places within the approved
35 restricted access adult-only facility that have been approved by
36 the commission. No video lottery terminal in a restricted access
37 adult-only facility may be relocated within the restricted access
38 adult-only facility without the prior written approval of the
39 commission;

40 (10) Assume financial responsibility for proper and timely
41 payments by limited video lottery retailers of all credits
42 awarded to players in accordance with legislative rules promul-
43 gated by the commission;

44 (11) Enter into contracts with limited video lottery retailers
45 to provide for the maintenance and repair of video lottery
46 terminals and associated equipment only by licensed service
47 technicians, and to provide for the placement of video lottery
48 terminals pursuant to the provisions of this article;

49 (12) Conduct no video lottery advertising and promotional
50 activities;

51 (13) Install, post and display prominently within or about
52 the approved location signs, redemption information and other
53 material as required by the commission;

54 (14) Maintain general liability insurance coverage for all
55 video lottery terminals in an amount of at least one million
56 dollars per claim;

57 (15) Promptly notify the commission in writing of any
58 breaks or tears to any logic unit seals;

59 (16) Assume liability for all amounts due to the commis-
60 sion in connection with any money lost or stolen from any
61 video lottery terminal;

62 (17) Comply with all applicable provisions of this article
63 and rules and orders of the commission; and

64 (18) Maintain a separate bank account into which the
65 operator shall deposit the gross terminal income from all of the
66 operator's video lottery terminals.

§29-22B-707. Additional duties of service technicians.

1 In addition to the general duties imposed on all licensees in
2 section 22B-701 of this article, a service technician shall:

3 (1) Maintain all skills necessary for the timely repair and
4 service of licensed video lottery terminals and associated
5 equipment so as to ensure the continued, approved operation of
6 those terminals;

7 (2) Attend all commission mandated meetings, seminars
8 and training sessions concerning the repair and maintenance of
9 licensed video lottery terminals and associated equipment;

10 (3) Promptly notify the commission in writing of any
11 electronic or mechanical video lottery terminal malfunctions;
12 and

13 (4) Comply with all applicable provisions of this article and
14 rules and orders of the commission.

**PART 8. APPROVAL OF VIDEO LOTTERY TERMINALS
AND ASSOCIATED EQUIPMENT.**

**§29-22B-801. Manufacturer seeking approval of terminal must be
licensed; prohibition against placement of unap-
proved terminal.**

1 (a) Only licensed manufacturers may apply to the lottery
2 commission for approval of a video lottery terminal or associ-
3 ated equipment.

4 (b) A manufacturer may not sell or lease a video lottery
5 terminal for placement in a licensed facility in the state unless
6 the terminal has been approved by the lottery commission.

§29-22B-802. Testing of video lottery terminals and associated equipment.

1 (a) The manufacturer shall submit two copies of terminal
2 illustrations, schematics, block diagrams, circuit analysis,
3 technical and operation manuals, and any other information
4 requested by the commission for the purpose of analyzing and
5 testing the video lottery terminal or associated equipment.

6 (b) The lottery commission may require that the manufac-
7 turer transport two working models of a video lottery terminal
8 to the location designated by the lottery commission for testing,
9 examination and analysis. When this is required:

10 (1) The manufacturer shall pay all costs of testing, exami-
11 nation, analysis and transportation of the video lottery terminal
12 models. The testing, examination and analysis of any video
13 lottery terminal model may require dismantling of the terminal,
14 and some tests may result in damage or destruction to one or
15 more electronic components of the terminal model. The lottery
16 commission may require that the manufacturer provide special-
17 ized equipment or pay for the services of an independent
18 technical expert to test the terminal; and

19 (2) The manufacturer shall pay the cost of transportation of
20 two video lottery terminals to lottery headquarters. The lottery
21 commission shall conduct an acceptance test to determine
22 terminal functions and central system compatibility. If the video
23 lottery terminal fails the commission conducted acceptance test,
24 the manufacturer shall make all modifications required by the
25 commission.

§29-22B-803. Reporting of testing results.

1 After each test has been completed, the commission shall
2 provide the terminal manufacturer with a report containing
3 findings, conclusions and pass/fail results. The report may
4 contain recommendations for video lottery terminal modifica-
5 tion to bring the terminal into compliance with the provisions
6 of this article.

PART 9. VIDEO LOTTERY HARDWARE AND SOFTWARE.

§29-22B-901. Hardware specifications.

1 Video lottery terminals licensed for placement in this state
2 must meet the hardware specifications set forth in this part 9.

§29-22B-902. Control of electrical power.

1 (a) A surge protector shall be installed on the electrical
2 power supply line to each video lottery terminal. A battery or
3 equivalent power back-up for the electronic meters shall be
4 capable of maintaining accuracy of all accounting records and
5 terminal status reports for a period of ninety days after power
6 is disconnected from the terminal. The power back-up device
7 shall be located within the locked logic board compartment of
8 the video lottery terminal.

9 (b) An on/off switch that controls the electrical current used
10 in the operation of the terminal shall be located in an accessible
11 place within the interior of the video lottery terminal.

12 (c) The operation of each video lottery terminal may not be
13 adversely affected by any static discharge or other electromag-
14 netic interference.

§29-22B-903. Coin or bill acceptors.

1 (a) A minimum of one electronic or mechanical coin
2 acceptor or other means by which to accurately and efficiently

3 establish credits must be installed on each video lottery
4 terminal. Each video lottery terminal may also contain bill
5 acceptors for one or more of the following: One-dollar bills,
6 five-dollar bills, ten-dollar bills and twenty-dollar bills.

7 (b) The lottery commission shall approve all coin and bill
8 acceptors prior to use on any video lottery terminal in this state.

9 (c) A video lottery terminal shall not allow more than two
10 dollars to be wagered on a single game.

**§29-22B-904. Security; access to the interior of video lottery
terminals.**

1 (a) Access to the interior of video lottery terminals shall be
2 controlled through a series of locks and seals.

3 (b) The main logic boards and all erasable programmable
4 read-only memory chips (EPROMS) are considered to be
5 owned by the lottery commission and shall be located in a
6 separate locked and sealed area within the video lottery
7 terminal.

8 (c) The cash compartment shall be located in a separate
9 locked area within or attached to the video lottery terminal.

10 (d) No hardware switches, jumpers, wire posts or any other
11 means of manipulation may be installed which alter the pay
12 tables or payout percentages in the operation of a game.
13 Hardware switches on a video lottery terminal intended to
14 control the terminal's graphic routines, speed of play, sound
15 and other purely cosmetic features may not be used without the
16 written approval of the commission.

17 (e) All video lottery terminals shall have a security system
18 which will temporarily disable the gaming function of the
19 terminal while opened.

§29-22B-905. Printing mechanism.

1 Each video lottery terminal must contain a single printing
2 mechanism capable of printing an original ticket and retaining
3 an exact legible copy within the video lottery terminal, or other
4 means of capturing and retaining an electronic copy of the
5 ticket data as approved by the lottery commission. The follow-
6 ing information must be recorded on the ticket when credits
7 accrued on a video lottery terminal are redeemed for cash:

8 (1) The number of credits accrued;

9 (2) The value of the credits in dollars and cents displayed
10 in both numeric and written form;

11 (3) The time of day and date;

12 (4) The validation number; and

13 (5) Any other information required by the commission.

§29-22B-906. Identification plate.

1 A permanently installed and affixed identification plate
2 shall appear on the exterior of each video lottery terminal and
3 the following information shall be on the plate:

4 (1) The manufacturer of the video lottery terminal;

5 (2) The serial number of the terminal; and

6 (3) The model number of the terminal.

§29-22B-907. Display of information on terminal face or screen.

1 All information required by this section must be displayed
2 under glass or another transparent substance.

3 (1) The rules of play for each game shall be displayed on
4 the video lottery terminal face or screen. The commission may
5 reject any rules of play that are incomplete, confusing, mislead-
6 ing or inconsistent with game rules approved by the commis-
7 sion.

8 (2) For each video lottery game, there shall be a display
9 detailing the credits awarded for the occurrence of each
10 possible winning combination of numbers or symbols.

11 (3) No stickers or other removable devices shall be placed
12 on the video lottery terminal screen or face without the prior
13 written approval of the commission.

14 (4) A label prominently displaying information on how to
15 locate and contact persons or organizations available for help,
16 assistance or treatment for persons who may have a gambling
17 addiction, together with the telephone number "1-800-GAM-
18 BLER."

§29-22B-908. Communication with central computer system.

1 Communication equipment and devices shall be installed to
2 enable each video lottery terminal to communicate with the
3 lottery commission's central computer system. The commission
4 shall provide to licensed manufacturers, or applicants applying
5 for a manufacturer's license, the protocol documentation data
6 necessary to enable the respective manufacturer's video lottery
7 terminals to communicate with the commission's central
8 computer for transmitting auditing program information and for
9 activation and disabling of video lottery terminals.

§29-22B-909. Random number generator required.

1 Each video lottery terminal shall have a random number
2 generator to determine randomly the occurrence of each
3 specific symbol or number used in video lottery games. A

4 selection process is random if it meets the following statistical
5 criteria:

6 (1) *Chi square test.* — Each symbol or number shall satisfy
7 the ninety-nine percent confidence limit using the standard
8 chi-square statistical analysis of the difference between the
9 expected result and the observed result;

10 (2) *Runs test.* — Each symbol or number may not produce
11 a significant statistic with regard to producing patterns of
12 occurrences. Each symbol or number is random if it meets the
13 ninety-nine percent confidence level with regard to the “runs
14 test” for the existence of recurring patterns within a set of data;

15 (3) *Correlation test.* — Each pair of symbols or numbers is
16 random if it meets the ninety-nine percent confidence level
17 using standard correlation analysis to determine whether each
18 symbol or number is independently chosen without regard to
19 another symbol or number within a single game play; and

20 (4) *Serial correlation test.* — Each symbol or number is
21 random if it meets the ninety-nine percent confidence level
22 using standard serial correlation analysis to determine whether
23 each symbol or number is independently chosen without
24 reference to the same symbol or number in a previous game.

§29-22B-910. Payout standards.

1 Each video lottery terminal shall meet the following
2 maximum and minimum theoretical percentage payout during
3 the expected lifetime of the terminal:

4 (1) Video lottery games shall pay out no less than eighty
5 percent and no more than ninety-five percent of the amount
6 wagered. The theoretical payout percentage shall be determined
7 using standard methods of probability theory;

8 (2) Manufacturers shall file a request and receive written
9 approval from the commission prior to manufacturing for
10 placement in this state video lottery games programmed for a
11 payout greater than ninety-two percent of the amount wagered.
12 Commission approval shall be obtained prior to applying for
13 testing of the high payout terminals; and

14 (3) Each game shall have a probability greater than one in
15 seventeen million of obtaining the maximum payout for each
16 play.

§29-22B-911. Continuation of current game after malfunction.

1 Each video lottery terminal shall be capable of continuing
2 the current game with all current game features after a video
3 lottery terminal malfunction is cleared. If a video lottery
4 terminal is rendered totally inoperable during game play, the
5 limited video lottery retailer shall return the current wager and
6 all credits appearing on the video lottery terminal screen prior
7 to the malfunction to the player.

§29-22B-912. Electronic accounting required.

1 (a) Each video lottery terminal shall at all times maintain
2 electronic accounting regardless of whether the terminal is
3 being supplied with electrical power. Each meter shall be
4 capable of maintaining a total of no less than eight digits in
5 length for each type of data required. The electronic meters
6 shall record the following information:

7 (1) The number of coins inserted by players or the coin
8 equivalent if a bill acceptor is being used;

9 (2) The number of credits wagered;

10 (3) The number of credits won;

- 11 (4) The number of credits paid out by a printed ticket;
- 12 (5) The number of times the logic area was accessed;
- 13 (6) The number of times the cash door was accessed;
- 14 (7) The number of credits wagered in the current game;
- 15 (8) The number of credits won in the last complete video
16 lottery game; and
- 17 (9) The number of cumulative credits representing money
18 inserted by a player and credits for video lottery games won but
19 not collected.
- 20 (b) No video lottery terminal may have any mechanism that
21 would allow the electronic accounting meters to clear automati-
22 cally. Electronic accounting meters may not be cleared without
23 the prior approval of the commission. Both before and after any
24 electronic accounting meter is cleared, the limited video lottery
25 retailer shall record all meter readings in the presence of a
26 commission employee.

**PART 10. CONDITIONS FOR SALE OR LEASE OF
VIDEO LOTTERY TERMINALS.**

§29-22B-1001. Manufacturer must be licensed.

1 A manufacturer of video lottery terminals may not sell or
2 lease video lottery terminals to any person for use in this state
3 unless the manufacturer possesses a current manufacturer's
4 license issued by the lottery commission as provided in this
5 article.

§29-22B-1002. Manufacturers may sell or lease only to permittees.

1 A licensed manufacturer of video lottery terminals may
2 only sell or lease video lottery terminals for use in this state to

3 a person who possesses at the time of delivery a valid permit to
4 own or lease one or more video lottery terminals and a valid
5 operator's license or a valid limited video lottery retailer's
6 license issued by the lottery commission as provided in this
7 article.

§29-22B-1003. Terminals must be approved.

1 A licensed manufacturer may not sell or lease a video
2 lottery terminal for placement by a permittee in this state unless
3 the terminal has been approved by the lottery commission as
4 provided in this article.

§29-22B-1004. Purchase or lease by permittees.

1 Only permittees may purchase or lease video lottery
2 terminals from a licensed manufacturer.

**PART 11. ALLOCATION AND DISTRIBUTION OF
VIDEO LOTTERY TERMINALS.**

**§29-22B-1101. Limitation on number and location of video lottery
terminals.**

1 (a) The lottery commission may not authorize the place-
2 ment of more than nine thousand video lottery terminals in
3 restricted access adult-only facilities in this state.

4 (b) No person may directly or indirectly operate more than
5 seven and one-half percent of the number of video lottery
6 terminals authorized in this section, which shall be located only
7 in restricted access adult-only facilities.

8 (c) No licensed limited video lottery retailer may be
9 authorized to have on the premises for which the license was
10 issued more than five video lottery terminals except that a
11 fraternal society or veteran's organization that is (A) a fraternal

12 beneficiary society that is exempt from federal income tax
13 under section 501(c)(8) of the Internal Revenue Code of 1986,
14 as amended, (B) a domestic fraternal society that is exempt
15 from federal income tax under section 501(c)(10), or (C) a
16 veterans' organization that is exempt from federal income tax
17 under section 501(c)(19) of the Internal Revenue Code may be
18 authorized to have on the premises for which the license was
19 issued not more than ten video lottery terminals.

§29-22B-1102. Permits to operate video lottery terminals; expiration date; annual fee to be paid by May 1st.

1 (a) The lottery commission shall establish forms for an
2 operator's permit to own or lease and operate video lottery
3 terminals and a permit for a limited video lottery retailer that
4 allows the holder to own or lease video lottery terminals from
5 a licensed manufacturer. The number of video lottery terminals
6 that a person may own or lease or have on a limited video
7 lottery retailer premises shall be stated in the license or permit
8 issued by the commission as provided in this article.

9 (b) Permits shall be issued by the commission for a period
10 of ten years, except that all permits expire on the thirtieth day
11 of June, 2011, unless they are sooner surrendered, modified,
12 suspended or revoked as provided in this article: *Provided*, That
13 the annual fee imposed by this part for each video lottery
14 terminal authorized in the permit shall be paid on or before the
15 first day of May each year.

§29-22B-1103. Permit fee.

1 For the privilege of holding a permit that authorizes the
2 licensee to own or lease video lottery terminals from a licensed
3 manufacturer, the person shall pay an annual fee of one
4 thousand dollars per video lottery terminal for which the permit
5 is issued. This fee shall initially be paid at the time the permit
6 is issued for the number of video lottery terminals a person is

7 authorized to own or lease without going through the bid
8 process. Thereafter, this fee shall be due and payable each first
9 day of May while the person holds the permit and the amount
10 of the fee shall be determined by the number of video lottery
11 terminals the person is permitted to own or lease from a
12 licensed manufacturer.

§29-22B-1104. Reservation of authority to have video lottery terminals on or before August 1, 2001.

1 (a) On or before the first day of August, 2001, every person
2 who held on the first day of January, 2001, a private club
3 license issued as provided in article 60-7-1 *et seq.* of this code,
4 or a class "A" nonintoxicating beer license issued as provided
5 in article 11-16-1 *et seq.* of this code, and wants to offer video
6 lottery terminals, as defined in this article, for the enjoyment of
7 the licensee's customers after the effective date of this article
8 shall file an application to be licensed as a limited video lottery
9 retailer under this article.

10 (b) The applications described in subsection (a) of this
11 section shall be in the form prescribed by the lottery commis-
12 sion, be signed by the applicant or a person authorized to sign
13 an application filed for a person who is not an individual, and
14 provide all of the information requested by the lottery commis-
15 sion. The commission shall not consider any application that is
16 incomplete in any material respect and the incomplete applica-
17 tion shall be returned to the applicant for completion and
18 refiling. An incomplete application submitted for a limited
19 video lottery retailer's license shall be returned to the applicant
20 for completion and refiling by the first day of August, 2001.

21 (c)(1) An application filed on or before the first day of
22 August, 2001 for a limited video lottery retailer's license shall
23 state the number of video lottery terminals to be located on the
24 premise of the applicant and state whether the applicant will

25 own or lease the video lottery terminals or obtain them from an
26 operator.

27 (2) The number of video lottery terminals a limited video
28 lottery retail licensee is authorized to have on its premises shall
29 be stated in the limited video lottery retailer's license issued to
30 the licensee. The number of video lottery terminals a limited
31 video lottery retailer is authorized to own or lease from a
32 manufacturer shall be stated in the permit issued to the licensee.
33 Once the permit is issued, the permittee may purchase or lease
34 the number of video lottery terminals authorized in the permit.
35 A limited video lottery retailer who elects to obtain video
36 lottery terminals from an operator may contract with an
37 operator for the number of video lottery terminals stated in the
38 license.

39 (d) Authorization to have a video lottery terminal on the
40 premises of a video lottery retailer expires on the thirtieth day
41 of June, 2011, and every ten years thereafter unless during the
42 fiscal year of the state ending the thirtieth day of June, 2011,
43 and each ten years thereafter, the video lottery retailer files an
44 application as provided in this section for the next ensuing ten
45 year period.

**§29-22B-1105. Determination of authorizations to be issued
without bid and number of authorizations to be
bid.**

1 (a) When the applications provided for in section 22B-1104
2 of this part are received by the commission on or before the
3 first day of August, 2001, the commission shall reserve for each
4 applicant authorizations to have no more than two video lottery
5 terminals on the premises for which the private club license
6 issued under article 60-7-1 et seq., of this code, or a class "A"
7 nonintoxicating beer license was issued prior to the first day of
8 January, 2001, except that a fraternal society or veteran's

9 organization that is (A) a fraternal beneficiary society that is
10 exempt from federal income tax under section 501(c)(8) of the
11 Internal Revenue Code of 1986, as amended, (B) a domestic
12 fraternal society that is exempt from federal income tax under
13 section 501(c)(10), or (C) a veterans' organization that is
14 exempt from federal income tax under section 501(c)(19) of the
15 Internal Revenue Code may be authorized to have on the
16 premises for which the license was issued not more than seven
17 video lottery terminals.

18 (b) The commission shall then determine the total number
19 of authorizations to have video lottery terminals reserved under
20 subsection (a) of this section and subtract that number from the
21 total number of video lottery terminals authorized for the state
22 in section 22B-1101 of this part. This establishes the number of
23 authorizations available for bid as provided in section 22B-
24 1106.

25 (c) If an application for a limited video lottery retailer's
26 license is received after the first day of August, 2001, whether
27 from an applicant who on the first day of January, 2001, held a
28 private club license issued under article 60-7-1, *et seq.*, of this
29 code or a class "A" nonintoxicating beer license issued under
30 article 11-16-1, *et seq.*, of this code, or from an applicant who
31 is issued a private club license or a class "A" nonintoxicating
32 beer license after the first day of January, 2001, no authoriza-
33 tion to have video lottery terminals may be reserved for that
34 applicant under this section. The applicant may contract with a
35 licensed operator to furnish video lottery terminals or may
36 submit a bid for authorization to own video lottery terminals as
37 provided in section 22B-1106 of this part.

38 (d) As used in this section the term "received" means
39 physically received in the office of the state lottery by 4:30 p.m.
40 on the first day of August, 2001.

§29-22B-1106. Allocation of permits to own or lease video lottery terminals by sealed bid.

1 (a) Any video lottery terminals not authorized by the
2 commission under section 1105 of this article shall be allocated
3 under the provisions of this section by sealed competitive bid.

4 (b) Bids for permits to own or lease video lottery terminals
5 shall be governed by the provisions of this part 11.

6 (c) A permit to own or lease one or more video lottery
7 terminals, as defined in this article, may only be issued to a
8 person who is licensed as an operator or a limited video lottery
9 retailer under this article.

10 (d) All permits issued under this section shall be based on
11 sealed competitive bids in accordance with the provisions of
12 this section.

13 (e) The commission may set a single uniform minimum bid
14 for each video lottery terminal for which bids are sought. Each
15 time before the first publication of a legal notice soliciting bids,
16 the commission may set a new minimum bid.

§29-22B-1107. Bidding process.

1 (a) Bids for issuance of permits shall be obtained by public
2 notice published as a Class II-0 legal advertisement in compli-
3 ance with the provisions of article 59-3-1, *et seq.* of this code;

4 (b) The second publication of the notice shall appear more
5 than sixty days next preceding the final day for submitting bids;

6 (c) Each bid shall indicate the number of video lottery
7 terminals for which the permit is sought. The bid shall state the
8 amount bid for each video lottery terminal for which the permit
9 is sought;

10 (d) No bid may be altered or withdrawn after the appointed
11 hour for the opening of the bids;

12 (e) Subject to the provisions of subsection (f) of this
13 section, permits shall be awarded to the persons submitting the
14 highest per terminal bids, except that no person may be
15 authorized to directly or indirectly own or lease more than
16 seven and one-half percent of the total number of video lottery
17 terminals authorized in section 22B-1101 of this article. If a
18 high bidder already holds a permit issued under this section, the
19 bid shall be awarded to that bidder, but only to the extent the
20 total number of video lottery terminals the operator or limited
21 video lottery retailer is authorized to directly or indirectly own
22 or lease does not exceed seven and one-half percent of the
23 number of video lottery terminals authorized for the entire state
24 specified in section 22B-1101 of this article;

25 (f) No bid shall be considered unless the bond required by
26 section 22B-1109 of this article accompanies the bid or was
27 submitted to the state treasurer before the time designated for
28 opening of the bid;

29 (g) No bid shall be considered unless the amount of the bid
30 equals or exceeds the minimum bid amount for a video lottery
31 terminal specified by the commission;

32 (h) All bids for a permit may be rejected by the commission
33 if the commission determines that the bids are inadequate. In
34 this event, the director shall begin anew the bidding process for
35 the permits;

36 (i) Whenever there are two or more bids of the same dollar
37 amount and the number of authorizations for which the bids
38 were submitted exceeds the number of authorizations still
39 available to fill the bids, the director shall award the permit
40 based upon the drawing of lots among the bidders;

41 (j) A person submitting a bid under this article shall deliver
42 one copy to the director of purchasing, West Virginia depart-
43 ment of administration and deliver a second or duplicate copy
44 to the state auditor. Both copies must be received at the
45 respective offices prior to the specified date and time of the bid
46 opening;

47 (k) The failure to deliver or the nonreceipt of these bid
48 forms at either of these offices prior to the appointed date and
49 hour are grounds for rejection of the bids. In the event of any
50 deviation between the copies submitted to the purchasing
51 division and the state auditor, the bids as to which there is a
52 deviation shall be rejected;

53 (l) After the award of a permit, the director of the lottery
54 shall indicate upon the successful bid that it was the successful
55 bid and the number of video lottery terminals for which a
56 permit is awarded to the bidder. This shall be the number of
57 video lottery terminals for which the bid was submitted, or the
58 remaining number of video lottery terminals to be awarded
59 when the number of video lottery terminals remaining is less
60 than the number of terminals for which the bid was submitted.
61 Thereafter, a copy of the bid and the bidder's application for an
62 operator's license or a limited video lottery retailer license shall
63 be maintained as a public record at the commissions' offices
64 and shall be open to public inspection during its normal
65 business hours. These documents may not be destroyed without
66 the prior written consent of the legislative auditor;

67 (m) Prior to issuing a permit to a successful bidder, the bid
68 price for the number of video lottery terminals authorized in the
69 permit plus the amount of the operator's annual license fee or
70 the limited video lottery retailer's annual license fee for the first
71 license year, as specified in section 518 of this article, shall be
72 paid to the commission by money order, certified check or
73 cashier's check. If the operator's annual license fee or the

74 limited video lottery retailer's license fee was paid for the
75 current license year before the due date of the bid amount, the
76 license fee shall not be collected a second time for the same
77 license year. The amount paid shall be deposited into the fund
78 established in section eighteen-a, article twenty-two of this
79 chapter;

80 (n) All permits shall be signed by the director of the lottery
81 in the name of the state;

82 (o) If the successful bidder fails to pay to the commission
83 the bid price and the operator's annual license fee or the limited
84 video lottery retailer's license fee for the first license year, at
85 the time specified by the commission, the bond provided for in
86 section 1109 of this article shall be forfeited and the bidder
87 shall not be issued the permit;

88 (p) In the event of a default, as provided in subsection (h)
89 of this section, the commission shall then issue the permit to the
90 next highest bidder for video lottery terminals, or reject all
91 remaining bids and start anew the bidding procedure for the
92 remaining number of video lottery terminals;

93 (q) If after a permit is awarded, an operator or limited video
94 lottery retailer surrenders the permit, in whole or in part, or the
95 permit is revoked or canceled by operation of law, the commis-
96 sion may seek bids for video lottery terminals for which
97 authorization was surrendered or revoked, subject to the
98 limitations and requirements of this article; and

99 (r) During the fiscal year of the state ending the thirtieth
100 day of June, 2011, the commission shall seek bids for the ten-
101 year period beginning the first day of July, 2011, and ending the
102 thirtieth day of June, 2021.

§29-22B-1108. Preference for current permit holders.

1 (a) When seeking bids for the ten-year period beginning the
2 first day of July, 2011, and ending the thirtieth day of June,
3 2021, and for each subsequent ten-year period, the commission
4 shall, in determining the amount a current holder of a permit
5 issued under section 1106 of this article shall pay for authoriza-
6 tion to place additional video lottery terminals in this state,
7 afford the bidder an additional preference, if the bidder submit-
8 ted at least the minimum bid amount prescribed by the commis-
9 sion, the amount of which shall be determined as provided in
10 subsection (b) of this section.

11 (b) The preference allowed by this section shall be com-
12 puted by adding five percent of the bid price submitted by the
13 current permit holder to the amount of the bid submitted by that
14 holder.

15 (c) Where the commission determines that it has not issued
16 permits for the number of video lottery terminals allowed to be
17 placed in this state, as provided in section 1101 of this article,
18 the commission shall allow current permit holders to bid on the
19 remaining video lottery terminals before opening up the bidding
20 to other persons. If the highest bid meets or exceeds the
21 minimum bid, the commission shall determine whether, at the
22 time of the bid, the bidder held a permit for the period ending
23 the thirtieth day of June, 2011, or for any ten-year period
24 thereafter, on the thirtieth day of June preceding the expiration
25 of the permit. If the current permit holder submitted a bid that
26 was not less than the minimum bid, the commission shall notify
27 the bidder that upon paying the amount of the highest bid, that
28 the permit for the ten-year period beginning the first day of
29 July, 2011, or for any ten-year period thereafter, shall be issued
30 to the current permit holder. If, within the time determined by
31 the commissioner, the current permit holder pays the amount to
32 the commission and complies with all other requirements
33 imposed by the provisions of this article for the issuance of the
34 permit, the permit for the ten-year period beginning the first day

35 of July, 2011, or for any ten-year period thereafter, shall be
36 issued to the current permit holder.

§29-22B-1109. Bid bond required.

1 (a) Each person submitting a bid under section 22B-1107 of
2 this article shall furnish to the commission a bond at the time of
3 bidding, which shall guarantee the payment of one hundred
4 percent of the price bid for the permit sought by the bidder.

5 (b) The bond required by this section shall be furnished in
6 cash or negotiable securities or shall be a surety bond issued by
7 a surety company authorized to do business with the state or an
8 irrevocable letter of credit issued by a financial institution
9 acceptable to the commission.

10 (c) If the bid bond is furnished in cash or negotiable
11 securities, the principal shall be deposited without restriction in
12 the state treasurer's office and credited to the commission, but
13 any income shall inure to the benefit of the bidder.

14 (d) The bond shall be returned to the bidder following the
15 bidding if the bidder is not a successful bidder for authorization
16 to place video lottery terminals in this state, as provided in this
17 article.

18 (e) If the bidder is a successful bidder, the bid bond shall be
19 released after the permit is issued, as provided in section 1106
20 of this article.

21 (f) If a successful bidder defaults in paying the amount due
22 by the date specified by the commission, as provided in section
23 1106 of this article, the bid bond shall be forfeited to the state.

24 (g) If the defaulting bidder was successful only in part
25 because the bid submitted was for authorization to place more
26 video lottery terminals than were awarded to the bidder, the

27 amount of the bid bond shall be prorated and the portion of the
28 bid bond attributable to video lottery terminals not awarded to
29 the defaulting bidder shall be returned to the bidder and the rest
30 shall be forfeited to the state.

§29-22B-1110. Operator permit.

1 (a) An operator who holds a permit issued under this
2 section may operate the number of video lottery terminals
3 specified in the permit.

4 (b) The number of video lottery terminals authorized in the
5 permit shall be the sum of the number of authorizations for
6 which the operator is the successful bidder under this section
7 plus the number of authorizations reserved under section 22B-
8 1104 of this article for video lottery retailers that elect to obtain
9 video lottery terminals from the operator. If after the permit is
10 issued, the operator enters into additional contracts with limited
11 video lottery retailers with authorizations issued under section
12 22B-1104 or obtains additional authorizations through the
13 bidding process, the operator shall apply to the commission for
14 a supplemental permit to operate the number of video lottery
15 terminals set forth in the application. Attached to the applica-
16 tion shall be a true copy of all contracts the applicant has
17 entered into with persons who hold a limited video lottery
18 retailer's license issued under this article for placement of video
19 lottery terminals in the premises of the limited video lottery
20 retailer for whom authorizations were reserved under section
21 22B-1104 of this article and a true copy of the certificate of
22 reservation issued by the commission to that video lottery
23 retailer.

24 (c) The contract between the operator and the limited video
25 lottery retailer shall be in writing and be signed by the parties,
26 or their duly authorized representative when the party is a
27 person who is not an individual.

§29-22B-1111. Reduction of video lottery terminals authorized in a retailer's license.

1 If after a limited video lottery license is issued or a permit
2 is issued, a retailer surrenders the license in whole or in part, or
3 the license is modified, revoked or canceled by operation of
4 law, the lottery commission shall then allocate authorizations
5 to operate those video lottery terminals through the bid process
6 described in section 1107 of this part 11, subject to the limita-
7 tions and requirements of this article.

§29-22B-1112. Reduction of gambling.

1 Each limited video lottery retailer shall conspicuously post
2 in the restricted access adult-only facility and disseminate the
3 telephone numbers of state approved providers of problem
4 gambling information, treatment and referral support services
5 and further conspicuously post the following: "CAUTION
6 Gambling and playing this machine can be hazardous to your
7 health, your finances, and your future."

§29-22B-1113. Operation of authorized video lottery terminals; forfeiture of authorization for failure to operate.

1 (a) A person who holds a permit or license to operate video
2 lottery terminals shall place the video lottery terminals autho-
3 rized by the license or permit in operation within six months
4 after receiving the license or permit in which the terminals are
5 first authorized. After January 1, 2002, a person who holds a
6 permit or license to operate video lottery terminals shall place
7 the video lottery terminals authorized by the license or permit
8 in operation within ninety days after receiving the license or
9 permit.

10 (b) After a video lottery terminal is connected to the
11 commission's central site system of monitoring lottery termi-
12 nals, the terminal may not be off-line for more than five

13 consecutive days, unless the terminal is off-line due to fire,
14 flood, or other act beyond the control of the operator. If the
15 terminal is off-line due to fire, flood, or other act beyond the
16 control of the operator, the terminal shall be reconnected to the
17 commission's central site by the date ordered by the commis-
18 sion. The commission shall propose a legislative rule for
19 promulgation in accordance with the provisions of article 29A-
20 3-1, *et seq.*, of this code, defining the term "other act beyond
21 the control of the operator" and providing for application of this
22 subsection (b).

23 (c) Except as otherwise provided in this section, authoriza-
24 tion to operate a video lottery terminal that is not connected to
25 the commission's central site system of monitoring lottery
26 terminals shall be forfeited to the commission on the first day
27 after expiration of the applicable period specified in this
28 subsection (a) or (b) of this section.

PART 12. PLACEMENT AND TRANSPORTATION OF VIDEO LOTTERY TERMINALS.

§29-22B-1201. Placement of video lottery terminals.

1 (a) Video lottery terminals allowed by this article may be
2 placed only in licensed limited video lottery locations approved
3 by the commission.

4 (b) All video lottery terminals in approved locations shall
5 be physically located as follows:

6 (1) The video lottery terminals shall be continuously
7 monitored through the use of a closed circuit television system
8 capable of identifying players and terminal faces and of
9 recording activity for a continuous twenty-four hour period. All
10 video tapes or other recording medium approved in writing by
11 the commission shall be retained for a period of at least sixty
12 days and be available for viewing by an authorized representa-

13 tive of the commission or the commissioner of alcohol beverage
14 control. The cost of monitoring shall be paid by the limited
15 video lottery retailer;

16 (2) Access to video lottery terminal locations shall be
17 restricted to persons legally entitled by age to play video lottery
18 games;

19 (3) The permittee shall submit for commission approval a
20 floor plan of the area or areas where video lottery terminals are
21 to be operated showing terminal locations and security camera
22 mount location; and

23 (4) No video lottery terminal or video lottery camera may
24 be relocated without prior written approval from the commis-
25 sion.

26 (c) Personnel of the limited video lottery retailer shall be
27 present during all hours of operation at each video lottery
28 terminal location. These personnel shall make periodic inspec-
29 tions of the restricted access adult-only facility in order to
30 provide for the safe and approved operation of the video lottery
31 terminals and the safety and well-being of the players.

32 (d) Security personnel of the commission and investigators
33 of the alcohol beverage control commissioner shall have
34 unrestricted access to video lottery terminal locations.

35 (e) Notwithstanding any other provision of this article to the
36 contrary, the commission may not approve the placement of a
37 video lottery terminal in a state park.

**§29-22B-1202. No limited video lottery retailer license for pre-
mises within 150 feet of another licensed pre-
mises; no two license retailer locations within a
common structure.**

1 (a) A limited video lottery retailer license may not be
2 granted for operation of video lottery terminals on a premises
3 if, at the time of application for the license, the applicant's
4 premises are within one hundred fifty feet of, or has an external
5 structural connection not amounting to a common internal wall
6 to, a premises that already has a license for video lottery
7 terminals.

8 (1) A measurement of the distance between two premises
9 must be taken between the nearest exterior wall of each
10 premises.

11 (2) When determining common ownership, the commission
12 shall consider direct as well as indirect ownership.

13 (b) A premises for which a private club license to dispense
14 alcoholic liquors, under provisions of article seven, chapter
15 sixty of this code, or a Class A nonintoxicating beer license,
16 under the provisions of article sixteen, chapter eleven of this
17 code, was granted, was applied for, or the transfer of which was
18 validly contracted for prior to the first day of January, two
19 thousand one, is not subject to subsection (a) and (c) of this
20 section.

21 (c) No more than one restricted access adult-only facility
22 shall hold a limited video lottery retailer license to offer video
23 lottery terminals in any single structure under one roof.

§29-22B-1203. Registration decals.

1 (a) Each video lottery terminal placed in operation in this
2 state shall have a commission registration decal permanently
3 affixed, with a video lottery terminal registration control
4 number placed on the video lottery terminal.

5 (b) No person other than authorized commission personnel
6 shall affix or remove a registration control number. The

7 affixing of the commission decal on a video lottery terminal
8 evidences that the terminal has been registered, inspected, and
9 approved for operation in this state.

10 (c) No terminal shall be transported out of this state until
11 authorized commission personnel have removed the commis-
12 sion registration control number, except when the transportation
13 of the terminal both begins and ends in this state.

§29-22B-1204. Installation of approved lottery terminals.

1 (a) The video lottery terminal manufacturer and licensed
2 permittee are jointly responsible for the assembly and installa-
3 tion of all video lottery terminals and associated equipment.

4 (b) The manufacturer and licensed permittee may not
5 change the assembly or operational functions of a terminal
6 licensed for placement in West Virginia unless a request for
7 modification of an existing video terminal prototype is ap-
8 proved in writing by the commission.

9 (c) The request for modification shall contain a detailed
10 description of the type of change, the reasons for the change
11 and technical documentation of the change.

12 (d) Each video lottery terminal approved for placement at
13 a licensed location shall conform to the exact specifications of
14 the video lottery terminal prototype tested and approved by the
15 commission.

16 (e) If any video lottery terminal or any video lottery
17 terminal modification which has not been approved by the
18 commission is supplied by a manufacturer and operated by a
19 licensed permittee, the video lottery terminal shall be prima
20 facie determined to be contraband. The commission or any law-
21 enforcement officer having jurisdiction shall seize and destroy

22 all of the licensed permittee's and manufacturer's noncomply-
23 ing video lottery terminals, as provided in part 18 of this article.

24 (f) In addition, the commission shall suspend the licenses
25 of the licensed permittee and the licensed manufacturer for the
26 period of time the commission considers to be appropriate
27 under the circumstances and may impose a civil penalty, as
28 provided in part 16 of this article.

**§29-22B-1205. Transportation from manufacturer and registra-
tion of video lottery terminals.**

1 (a) A manufacturer transporting or arranging for the
2 transportation of one or more video lottery terminals into this
3 state shall, prior to shipment, provide the commission with the
4 following information on forms prescribed by the commission:

5 (1) The full name and address of the person shipping the
6 video lottery terminals;

7 (2) The method of shipment and the name of the carrier;

8 (3) The full name and address of the permittee to which the
9 video lottery terminals are being sent and the destination of the
10 terminals if different from the address of the permittee;

11 (4) The number of video lottery terminals in the shipment;

12 (5) The serial number of each video lottery terminal in the
13 shipment;

14 (6) The model number and description of each video lottery
15 terminal in the shipment; and

16 (7) The expected arrival date of the video lottery terminals
17 at their respective destination within this state.

18 (b) A permittee that purchases or leases a video lottery
19 terminal shall, upon receipt of the terminal, provide the
20 commission with the following information on forms prescribed
21 by the commission:

22 (1) The full name and address of the limited video lottery
23 retailer who will receive the video lottery terminal;

24 (2) The full name and address of the manufacturer from
25 whom the video lottery terminal was received;

26 (3) The serial number of each video lottery terminal
27 received;

28 (4) The model number and description of each video lottery
29 terminal received;

30 (5) The date and time of video lottery terminal arrival; and

31 (6) The expected date and time of video lottery terminal
32 installation.

33 (c) If a video lottery terminal is not placed in operation, the
34 permittee shall notify the commission in writing of the location
35 where the terminal is stored.

§29-22B-1206. Any other transportation of video lottery terminals.

1 (a) Any person who transports a video lottery terminal from
2 one location to another in this state, other than for repair or
3 servicing purposes, shall notify the commission in writing prior
4 to the transportation of the terminal and provide the following
5 information on forms required by the commission:

6 (1) The full name and address of the person or entity
7 transporting the video lottery terminal;

8 (2) The reason for transporting the video lottery terminal;

9 (3) The full name and address of the person or entity to
10 whom the terminal is being sent and the destination of the video
11 lottery terminal if it is different from the address;

12 (4) The serial and model number of the video lottery
13 terminal;

14 (5) The video lottery terminal license number, if affixed;

15 (6) The manufacturer of the video lottery terminal; and

16 (7) The expected date and time of video lottery terminal
17 installation or reinstallation.

18 (b) Any person shipping video lottery terminals to a
19 destination outside of this state shall, prior to the shipment,
20 provide the commission with the following information on
21 forms prescribed by the commission:

22 (1) The full name and address of the person shipping the
23 video lottery terminals;

24 (2) The method of shipment and the name of the carrier;

25 (3) The full name and address of the person to whom the
26 video lottery terminals are being sent and the destination of the
27 video lottery terminals if different from the address;

28 (4) The serial number of each video lottery terminal being
29 shipped;

30 (5) The model number and description of the video lottery
31 terminal being shipped;

32 (6) The video lottery terminal control number, if affixed;

33 (7) The manufacturer of the video lottery terminal being
34 shipped; and

35 (8) The expected date and time of the shipment.

**PART 13. MAINTENANCE AND REPAIR OF
VIDEO LOTTERY TERMINALS.**

§29-22B-1301. Maintenance of video lottery terminals.

1 (a) No video lottery terminal may be placed in operation in
2 this state until the manufacturer provides training in the service
3 and repair of each approved video lottery terminal model and
4 service technicians complete the training.

5 (b) Manufacturers shall submit to the commission the
6 following information on each training program conducted:

7 (1) An outline of the training curriculum;

8 (2) A list of the instructors and their qualifications;

9 (3) Instructional materials; and

10 (4) The time, dates and location of the training programs.

11 (c) Manufacturers shall notify all licensed permittees who
12 have purchased or leased that manufacturer's video lottery
13 terminals of all scheduled training programs.

14 (d) The manufacturers shall schedule training programs at
15 convenient locations within this state to facilitate attendance by
16 service technicians.

17 (e) Manufacturers shall inform licensed permittees of any
18 new developments in the service and repair of video lottery
19 terminals and provide appropriate subsequent training pro-
20 grams.

21 (f) The manufacturers shall issue a training certificate to
22 each person upon successful completion of a video lottery
23 training program.

24 (g) The certificate shall include the name of the person who
25 completed the training program and the date and the location of
26 the training program.

27 (h) A person who successfully completes training is eligible
28 for a service technician's license.

29 (i) No person may conduct maintenance (other than
30 clearing paper ticket jams or clearing coin and bill acceptor
31 jams) on any video lottery terminal or associated equipment
32 unless the commission has issued a service technician license
33 to that person.

34 (j) Each manufacturer shall file with the commission the
35 following information within two weeks after the completion of
36 a training program:

37 (1) The name of each person who attended and completed
38 the training program;

39 (2) The name of the manufacturer offering the course;

40 (3) The manufacturer's video lottery terminal models on
41 which training for service and repair was provided;

42 (4) The date and location of the training program; and

43 (5) Copies of all certificates of completion.

§29-22B-1302. Maintenance log.

1 A written maintenance log shall be kept within the main
2 cabinet access area in each video lottery terminal. Every person,
3 including lottery personnel, who gains entry into any internal

4 space of a video lottery terminal shall sign the log, record the
5 time and date of entry, record the mechanical meter readings
6 and list the areas inspected or repaired. The maintenance log
7 forms shall be retained by permittees for a period of three years
8 from the date of the last entry. The maintenance logs shall be
9 available upon request for inspection by the commission.

§29-22B-1303. Master keys.

1 Permittees shall provide the commission with a master key
2 for access into the main cabinet door of each video lottery
3 terminal placed in operation. The commission shall provide a
4 logic box seal. The seal shall be affixed by commission
5 personnel to prevent unauthorized access to the video lottery
6 terminal logic unit.

§29-22B-1304. Repairs to logic board or circuitry.

1 (a) No repairs to, or replacement of, the logic board or
2 circuitry within the logic area shall occur unless authorized
3 commission personnel are present and observe the repairs or
4 replacement.

5 (b) The logic area seal shall not be broken by anyone other
6 than authorized commission personnel.

7 (c) Each service technician shall submit a written report to
8 the commission within twenty-four hours after the repairs or
9 replacement are completed and the report shall include the
10 serial number of any replacement board and the new logic area
11 seal number.

12 (d) The commission shall test the software EPROMS on the
13 logic board of each video lottery terminal prior to sealing the
14 logic area.

15 (e) License holders shall promptly notify the commission
16 in writing of any discovered damage, tears or breaks in the logic
17 area seal. This written notification shall be delivered electroni-
18 cally or by telephone facsimile machine whenever possible.
19 Upon receipt of that notice, the commission shall disable the
20 video lottery terminal. The video lottery terminal shall remain
21 disabled until completion by the commission of an investigation
22 of the seal damage.

**PART 14. NET TERMINAL INCOME AND
DISTRIBUTION OF REVENUES.**

**§29-22B-1401. Accounting for the state's share of gross terminal
income.**

1 (a) The gross terminal income from all operating video
2 lottery terminals of a permittee shall be calculated periodically
3 by the commission.

4 (b) Each licensed permittee shall maintain in its bank
5 account an amount equal to or greater than the lottery commis-
6 sion's share of the gross terminal income from its operation of
7 video lottery machines, to be electronically transferred by the
8 lottery commission on dates established by the commission.

9 (c) Upon a permittee's failure to maintain the bank account
10 balance required in subsection (b) of this section, the commis-
11 sion may disable all of a permittee's video lottery terminals
12 until full payment of all amounts due is made.

13 (d) Interest shall accrue on any unpaid balance due the
14 commission at the rates charged for state income tax delin-
15 quency under chapter eleven of this code. The interest shall
16 begin to accrue on the date payment is due to the commission
17 and shall continue to accrue until the amount due, including
18 applicable interest, is paid. Payments shall be applied first to

19 interest and then to the balance of the amount due the commis-
20 sion.

§29-22B-1402. Resolution of discrepancies.

1 (a) The commission's central control computer shall keep
2 accurate records of all income generated by each video lottery
3 terminal. The commission shall prepare and send to the
4 permittee a statement by mail, facsimile or internet e-mail
5 reflecting the gross terminal income generated by the licensee's
6 video lottery terminals. Each permittee shall report to the
7 commission any discrepancies between the commission's
8 statement and each terminal's mechanical and electronic meter
9 readings.

10 (b) The permittee is solely responsible for resolving income
11 discrepancies between actual money collected and the amount
12 shown on the accounting meters or on the commission's billing
13 statement.

14 (c) The licensed operator is solely responsible for paying
15 the negotiated share of net terminal income, to each limited
16 video lottery retailer to whom it has supplied video lottery
17 terminals under the provisions of this article.

18 (d) Each limited video lottery retailer's periodic distribution
19 from the appropriate operator shall be paid by check or by
20 electronic funds transfer to the limited video lottery retailer's
21 designated bank account.

22 (e) Until an accounting discrepancy is resolved in favor of
23 the permittee, the commission may make no credit adjustments.

24 (f) For any video lottery terminal reflecting a discrepancy,
25 the permittee shall submit to the commission the maintenance
26 log which includes current mechanical meter readings and the

27 audit ticket which contains electronic meter readings generated
28 by the terminal's software.

29 (g) If the meter readings and the commission's records
30 cannot be reconciled, final disposition of the matter shall be
31 determined by the commission.

32 (h) Any accounting discrepancies that cannot be otherwise
33 resolved shall be resolved in favor of the commission.

§29-22B-1403. Payover of state's share of gross terminal income.

1 (a) The commission shall periodically transfer from each
2 permittee's bank account described in subsection 22B-1401(b)
3 of this article, the state's share of gross terminal income as
4 calculated under section 22B-1408 of this article.

5 (b) The permittee shall remit payment by mail and submit
6 the report required by subsection (c) of this section if the
7 electronic transfer of funds is not operational or the commission
8 notifies the permittee that remittance by this method is required.

9 (c) If the remittance is by mail, the permittee shall report an
10 amount equal to the total amount of cash inserted into each
11 video lottery terminal operated by a licensee, minus the total
12 value of game credits which are cleared from the video lottery
13 terminal in exchange for winning redemption tickets, and remit
14 the state's share of the amount generated from its terminals
15 during the reporting period. The remittance shall be sealed in a
16 properly addressed and stamped envelope and deposited in the
17 United States mail no later than noon on the day when the
18 payment would otherwise be completed through electronic
19 funds transfer.

20 (d) A permittee may, upon request, receive additional
21 reports of play transactions for their respective video lottery
22 terminals and other marketing information not considered

23 confidential by the commission. The commission may charge
24 a reasonable fee for the cost of producing and mailing any
25 report other than the billing statements.

§29-22B-1404. Permittees to furnish bank authorizations.

1 (a) Each permittee shall furnish to the commission all
2 information and bank authorizations required to facilitate the
3 timely transfer of moneys to the commission and from the
4 commission to each permittee.

5 (b) Each permittee shall provide the commission thirty
6 days' advance notice of any proposed account changes in order
7 to assure the uninterrupted electronic transfer of funds.

§29-22B-1405. State's share of gross terminal income held in trust.

1 The amount of gross terminal income required to be paid
2 over to the commission, shall be deemed to be moneys held in
3 trust for the state of West Virginia while in the possession or
4 constructive possession of any operator or limited video lottery
5 retailer and until the state's share of gross terminal income is
6 paid over to the commission.

§29-22B-1406. Examination of permittee books and records.

1 The commission has the right to examine all accounts, bank
2 accounts, financial statements and records in a permittee's
3 possession, under its control or in which it has an interest and
4 the licensed permittee shall authorize all third parties in
5 possession or in control of the accounts or records to allow
6 examination of any of those accounts or records by the commis-
7 sion.

§29-22B-1407. Civil penalty for failure to pay over state's share of gross terminal income.

1 (a) Any person required by law or contract to collect,
2 truthfully account for, and pay over any of the state's share of
3 gross terminal income who willfully fails to truthfully account
4 for and pay over the net terminal income, or willfully attempts
5 in any manner to evade or defeat any payment thereof, shall, in
6 addition to other penalties provided by law, be liable for
7 payment of a civil money penalty equal to the total amount of
8 the state's share of gross terminal income not paid over to the
9 commission.

10 (b)(1) No penalty may be imposed under subsection (a)
11 unless the director notifies the person in writing, delivered in
12 person or by mail sent to the last known address of the operator
13 or limited video lottery retailer, that he or she is subject to an
14 assessment of this penalty.

15 (2) The mailing of the notice described in subdivision (1)
16 (or, in the case of notice delivered in person, the delivery) shall
17 precede any notice and demand for payment of any penalty
18 under subsection (a) of this section, by at least sixty days.

19 (3) If a notice described in subdivision (1) of this subsec-
20 tion (b) with respect to any penalty is mailed or delivered in
21 person before the expiration of the three-year period for the
22 assessment of the penalty (determined without regard to this
23 subdivision), the three-year period provided for the assessment
24 of a penalty shall not expire before the later of:

25 (A) The date ninety days after the date on which such
26 notice was mailed, or delivered in person, or

27 (B) If there is a timely protest of the proposed assessment,
28 the date thirty days after the director makes a final administra-
29 tive determination with respect to the protest.

30 (4) The requirement that preliminary notice be given shall
31 not apply if the director finds that the collection of the penalty
32 is in jeopardy.

33 (c) This penalty may be collected by civil action instituted
34 within three years after the date the state's share of gross
35 terminal income not paid over to the commission should have
36 been paid over to the commission, except as provided in
37 subsection (b) of this section.

38 (d) If more than one person is liable for the penalty under
39 subsection (a) with respect to any payment of the state's share
40 of gross terminal income, each person who paid the penalty
41 shall be entitled to recover from other persons who are liable
42 for the penalty an amount equal to the excess of the amount
43 paid by the person over that person's proportionate share of the
44 penalty. Any claim for such a recovery may be made only in a
45 proceeding which is separate from, and is not joined or consoli-
46 dated with, an action for collection of such penalty brought by
47 the state of West Virginia.

48 (e) No penalty shall be imposed by subsection (a) on any
49 unpaid, volunteer member of any board of trustees or directors
50 of an organization exempt from tax under section 501 of the
51 Internal Revenue Code of 1986, as amended, if such member:

52 (1) Is solely serving in an honorary capacity;

53 (2) Does not participate in the day-to-day or financial
54 operations of the organization; and

55 (3) Does not have actual knowledge of the failure on which
56 the penalty is imposed.

57 This subsection (e) shall not apply if it results in no person
58 being liable for the penalty imposed by subsection (a) of this
59 section.

§29-22B-1408. Distribution of state's share of gross terminal income.

1 (a) The state's share of gross terminal income is calculated
2 as follows:

3 (1) The commission shall deposit two percent of gross
4 terminal income into the state lottery fund for the commission's
5 costs and expenses incurred in administering this article. From
6 this amount, not less than one hundred fifty thousand dollars
7 nor more than one million dollars per fiscal year, as determined
8 by the commission each year, shall be transferred to the
9 compulsive gambling treatment fund created in section 29-22A-
10 19 of this chapter. In the event that the percentage allotted
11 under this subsection for the commission's costs and expenses
12 incurred in administering this article generates a surplus, the
13 surplus shall be allowed to accumulate to an amount not to
14 exceed two hundred fifty thousand dollars. On a monthly basis,
15 the director shall report to the joint committee on government
16 and finance of the Legislature any surplus in excess of two
17 hundred fifty thousand dollars and remit to the state treasurer
18 the entire amount of those surplus funds in excess of two
19 hundred fifty thousand dollars to be deposited in the fund
20 established in section 29-22-18a of this chapter.

21 (2) Gross profits are determined by deducting the percent-
22 age described in subdivision (1) of this subsection, from gross
23 terminal income.

24 (3) The commission shall receive thirty percent of gross
25 profits as defined in subdivision (2) of this subsection except as
26 otherwise provided in this subdivision. On the first day of June,
27 2002, the commission shall calculate the aggregate average
28 daily gross terminal income for all operating video lottery
29 terminals during the preceding three month period. Thereafter,
30 the commission shall make the calculation on the first day of

31 the month preceding the months of October, January, April and
32 July of each year. So long as the aggregate average gross
33 terminal income per day for the operating video lottery termi-
34 nals does not exceed sixty dollars, the commission's share of
35 gross profits shall continue to be thirty percent for the succeed-
36 ing quarter of the year beginning the first day of July. Begin-
37 ning on the first day of July, 2002 and the first days of October,
38 January, April and July in 2002 and thereafter, if the commis-
39 sion's calculation of aggregate average daily gross terminal
40 income per video lottery terminal yields an amount greater than
41 sixty dollars, one of the following schedules apply: If the
42 amount is greater than sixty dollars per day but not greater than
43 eighty dollars per day, the commission's share of gross profits
44 for the ensuing quarter beginning the first day of the quarter of
45 the year described in this subdivision shall be thirty-four
46 percent; if the amount is greater than eighty dollars per day but
47 not greater than one hundred dollars per day, the commission's
48 share of gross profits for the ensuing quarter beginning the first
49 day of the quarter of the year described in this subdivision shall
50 be thirty-eight percent; if the amount is greater than one
51 hundred dollars per day but not greater than one hundred twenty
52 dollars per day, the commission's share of gross profits for the
53 ensuing quarter beginning the first day of the quarter of the year
54 described in this subdivision shall be forty-two percent; if the
55 amount is greater than one hundred twenty dollars per day but
56 not greater than one hundred forty dollars per day, the commis-
57 sion's share of gross profits for the ensuing quarter beginning
58 the first day of the quarter of the year described in this subdivi-
59 sion shall be forty-six percent; if the amount is greater than one
60 hundred forty dollars per day, the commission's share of gross
61 profits for the ensuing quarter beginning the first day of the
62 quarter of the year described in this subdivision shall be fifty
63 percent. This amount shall be known as net terminal income.

64 (b) Net terminal income shall be distributed by the commis-
65 sion as follows:

66 (1)(A) Beginning the first day of July, 2002, a county and
67 the incorporated municipalities within that county shall receive
68 two percent of the net terminal income generated by limited
69 video lottery terminals located within the county;

70 (B) From this two percent of net terminal income, each
71 municipality shall receive a share that bears the same propor-
72 tion to the total two percent of net terminal income as the
73 population of the municipality bears to the total population of
74 the county as determined by the most recent decennial United
75 States census of population, and the county shall receive the
76 remaining portion of the two percent of net terminal income;
77 and

78 (2) Any remaining funds shall be deposited into the state
79 excess lottery revenue fund established in section eighteen-a,
80 article twenty-two of this chapter.

81 (c) The licensed operators and limited video lottery retailers
82 shall receive the balance of gross terminal income remaining
83 after deduction of the state's share as calculated pursuant to this
84 section.

PART 15. APPEAL OF ORDER OF THE COMMISSION.

§29-22B-1501. Appeal of order.

1 (a) Any applicant or license holder adversely affected by an
2 order issued under this article has the right to a hearing on the
3 order before the commission or a person designated as hearing
4 examiner, if a petition in writing requesting a hearing is served
5 upon the commission within ten days following the receipt of
6 the order by the applicant, or license holder.

7 (b) A petition for hearing shall be served on the commis-
8 sion by delivery in person at the primary office of the commis-

9 sion or by certified mail. By procedural rule, the commission
10 may allow other methods of service.

11 (c) The service of a petition for hearing upon the commis-
12 sion shall not operate to suspend the execution of any suspen-
13 sion or revocation of a video lottery license or any other order
14 of the commission with respect to which a hearing is being
15 demanded.

16 (d) The commission shall set a date for any hearing
17 demanded and notify the person demanding the hearing not
18 later than ten days before the hearing date of the date, time and
19 place of the hearing. The hearing shall be held within thirty
20 days after receipt of the petition.

§29-22B-1502. Contents of petition for hearing; security.

1 (a) A petition for a hearing shall be in writing and shall
2 include an original and one copy. The petition shall contain the
3 following:

4 (1) A clear and concise statement of each error which the
5 petitioner alleges to have been committed by the commission in
6 refusing to issue a license, or suspending or revoking a license,
7 with each assignment of error being shown in separately
8 numbered paragraphs;

9 (2) A clear and concise statement of fact upon which the
10 petitioner relies as sustaining each assignment of error;

11 (3) A prayer setting forth the relief sought;

12 (4) The signature of the petitioner; and

13 (5) Verification by the petitioner.

14 (b) The person demanding a hearing shall give security for
15 the cost of the hearing in the amount of three hundred dollars in

16 the form of a certified check, cashier's check or money order,
17 which shall accompany the petition demanding a hearing.

§29-22B-1503. Hearing procedures.

1 (a) Hearings held under this article shall be subject to the
2 provisions of article 29A-5-1, *et seq.*, of this code except to the
3 extent otherwise provided in this article. In case of any conflict,
4 the provisions of this article shall control.

5 (b) In all hearings held under this article, oral and document-
6 tary evidence may be required through the use of subpoenas and
7 subpoenas duces tecum. The subpoenas or subpoenas duces
8 tecum may be issued by either the commission or its duly
9 appointed hearing examiner, and the following provisions shall
10 govern and control:

11 (1) Every subpoena or subpoena duces tecum shall be
12 served at least five days before the return date thereof, either by
13 personal service made by any person eighteen years of age or
14 older, or by registered or certified mail, but a return acknowl-
15 edgment signed by the person to whom the subpoena or
16 subpoena duces tecum is directed is required to prove service
17 by registered or certified mail;

18 (2) All subpoenas and subpoenas duces tecum shall be
19 issued in the name of the commission. Service of subpoenas
20 and subpoenas duces tecum issued at the insistence of the
21 commission is the responsibility of the commission, but any
22 party requesting issuance is responsible for service. Any person
23 who serves any subpoena or subpoena duces tecum is entitled
24 to the same fee as sheriffs who serve witness subpoenas for the
25 circuit courts of this state, and fees for the attendance and travel
26 of witnesses shall be the same as for witnesses before the circuit
27 courts of this state;

28 (3) All fees shall be paid by the commission if the subpoena
29 or subpoena duces tecum is issued, without the request of an
30 interested party, at the insistence of the commission;

31 (4) All fees related to any subpoenas or subpoena duces
32 tecum issued at the insistence of an interested party shall be
33 paid by the interested party;

34 (5) All requests by an interested party for a subpoena and
35 subpoena duces tecum shall be in writing and shall contain a
36 statement acknowledging that the requesting party agrees to pay
37 the fees; and

38 (6) Any person receiving a subpoena or subpoena duces
39 tecum issued under this section shall honor the subpoena or
40 subpoena duces tecum as though it were issued by a circuit
41 court of this state, and shall appear as a witness or produce such
42 books, records or papers in response to the subpoena or
43 subpoena duces tecum. In case of disobedience or neglect of
44 any subpoena or subpoena duces tecum served on any person or
45 the refusal of any witness to testify to any matter regarding
46 which he or she may be lawfully interrogated, the circuit court
47 of the county in which the hearing is being held, or the judge
48 thereof in vacation, shall, upon application by the commission,
49 compel obedience by contempt proceedings as in the case of
50 disobedience of the requirements of a subpoena or subpoena
51 duces tecum issued from the circuit court or a refusal to testify
52 in the circuit court.

53 (c) Hearings may not be delayed by a motion for continu-
54 ance made less than seven days before the date set for the
55 hearing.

56 (d) The commission may designate a hearing examiner to
57 conduct the hearing.

58 (e) The petitioner may appear individually, or by legal
59 counsel.

60 (f) The petitioner, or his or her duly authorized representa-
61 tive, may, with the approval of the commission, waive the right
62 to a hearing and agree to submit the case for decision upon the
63 petition and record, with or without a written brief. The waivers
64 and agreements shall be in writing or upon the record.

65 (g) The petitioner shall be given an opportunity for argu-
66 ment within the time limits fixed by the commission following
67 submission of evidence. The commission, upon request of the
68 petitioner, shall accept briefs in addition to or in lieu of
69 argument. Briefs shall be filed within ten days after the hearing
70 date.

71 (h) The commission may admit any relevant evidence,
72 except that it shall observe the rules of privilege recognized by
73 law. A finding is to be supported by the kind of evidence
74 commonly relied upon by reasonably prudent men in the
75 conduct of their affairs, whether or not the evidence would be
76 admissible before a jury. The commission may exclude any
77 evidence which is irrelevant, unduly repetitious, or lacking in
78 substantial probative effect.

79 (i) A record shall be made of all hearings held pursuant to
80 this article. Testimony may be recorded electronically or by a
81 court reporter.

82 (j) After the conclusion of the hearing and within ten days
83 of receipt of the transcript of the hearing, and receipt of any
84 briefs, the person designated by the commission as hearing
85 examiner shall prepare a recommended decision, supported by
86 findings of fact and conclusions of law, affirming, modifying or
87 vacating the earlier order of the commission. Thereafter, the
88 commission, within ten days of receipt of the recommended
89 decision, shall either accept or reject the recommended deci-

90 sion, and if it accepts the decision, it shall cause the director to
91 sign and acknowledge the decision as its own, after having
92 reviewed the transcript and all exhibits attached and affixed to
93 the decision; if the commission rejects the decision, it shall
94 within ten days of receipt of the recommended decision prepare
95 a decision setting forth its own findings of fact and conclusions
96 of law. In either event, the decision is final unless vacated or
97 modified upon judicial review of the decision. A copy of the
98 decision shall be served upon each party to the hearing and their
99 attorney of record, if any, in person or by registered or certified
100 mail.

§29-22B-1504. Judicial review.

1 The applicant or license holder who filed the petition for
2 administrative review may appeal the decision of the commis-
3 sion issued under section 22B-1503 to the circuit court of
4 Kanawha County, West Virginia, if the petition for appeal is
5 filed no later than thirty days after the date upon which the
6 petitioner receives written notice of the final decision of the
7 commission.

PART 16. CIVIL PENALTIES.

§29-22B-1601. Imposition of civil penalties by the commission.

1 The commission may impose the civil penalties provided
2 for in this part 16. These civil penalties may be imposed in
3 conjunction with one or more other civil penalties provided in
4 this part 16 and in conjunction with a license suspension or
5 revocation or other administrative action taken against a
6 licensee, or as a result of an action or inaction by a licensee for
7 which the commission is also seeking criminal prosecution.

**§29-22B-1602. Civil penalties applicable to limited video lottery
retailers.**

1 (a) For allowing persons under age twenty-one years to play
2 video lottery games, the limited video lottery retailer shall be
3 fined:

4 (1) Two hundred dollars for a first violation;

5 (2) One thousand dollars for a second violation; and

6 (3) Five thousand dollars for a third violation.

7 For each subsequent violation, the fine imposed by the
8 commission shall increase by five thousand dollars.

9 (b) For allowing persons under age twenty-one years to be
10 present at a video lottery terminal or in the immediate area
11 where video lottery terminals are present, the limited video
12 lottery retailer may be fined:

13 (1) One hundred dollars for a first violation;

14 (2) Two hundred dollars for a second violation; and

15 (3) Three hundred dollars for a third violation.

16 For each subsequent violation, the fine imposed by the
17 commission shall increase by one hundred dollars.

18 (c) For allowing a person or persons to tamper in any way
19 with, or disconnect, any data line or feature that allows the
20 state's central control computer to communicate with each
21 video lottery terminal in the premises, the limited video lottery
22 retailer may be fined:

23 (1) One thousand dollars for a first violation;

24 (2) Five thousand dollars for a second violation; and

25 (3) Ten thousand dollars for a third violation.

26 For each subsequent violation, the fine imposed by the
27 commission shall increase by ten thousand dollars.

28 (d) For entering the logic area of a video lottery terminal or
29 allowing an unauthorized person or persons to enter the logic
30 area of a video lottery terminal, or tampering in any way with
31 the lottery security seal, any EPROM or other chip or memory
32 device installed in the logic area, whether or not any tampering
33 would alter any characteristic of the video lottery terminal, the
34 limited video lottery retailer may be fined:

35 (1) One thousand dollars for a first violation;

36 (2) Five thousand dollars for a second violation; and

37 (3) Ten thousand dollars for a third violation.

38 For each subsequent violation, the fine imposed by the
39 commission shall increase by ten thousand dollars.

40 (e) For failure to aim or focus a closed circuit television
41 camera on all video lottery terminals in the premises or for
42 failure to record all video lottery terminals during the hours of
43 operation of the limited access adults-only facility, the limited
44 video lottery retailer shall be fined:

45 (1) One hundred dollars for a first violation;

46 (2) One thousand dollars for a second violation; and

47 (3) Five thousand dollars for a third violation.

48 For each subsequent violation, the fine imposed by the
49 commission shall increase by five thousand dollars.

50 (f) For violating the provisions of subdivision (10), subdivi-
51 sion (13) or subdivision (14) of section 29-22B-702 of this
52 article, the limited video lottery retailer shall be fined:

- 53 (1) One hundred dollars for a first violation:
- 54 (2) One thousand dollars for a second violation;
- 55 (3) Five thousand dollars for a third violation.

56 For each subsequent violation the fine imposed by the
57 commission shall increase by an additional five thousand
58 dollars.

§29-22B-1603. Civil penalties applicable to service technicians.

1 (a) For entering the logic area of any video lottery terminal
2 at any time when a representative of the West Virginia Lottery
3 Commission is not present and observing the process, the
4 service technician shall be fined:

- 5 (1) One hundred dollars for a first violation;
- 6 (2) One thousand dollars for a second violation; and
- 7 (3) Three thousand dollars for a third violation.

8 (b) For each subsequent violation, the fine imposed by the
9 commission shall increase by one thousand dollars. If two or
10 more service technicians participate in violation of this section,
11 each service technician shall be fined according to this sched-
12 ule.

§29-22B-1604. Civil penalties applicable to permittees.

1 (a) For employing or contracting with persons, other than
2 service technicians licensed by the commission, to repair video
3 lottery terminals, the permittee shall be fined:

- 4 (1) One thousand dollars for a first violation;
- 5 (2) Five thousand dollars for a second violation; and

6 (3) Ten thousand dollars for a third violation.

7 For each subsequent violation, the fine imposed by the
8 commission shall increase by ten thousand dollars.

9 (b) For acquiring, or installing in licensed premises, any
10 video lottery terminal that has not been manufactured and
11 supplied by a licensed manufacturer, that has not also been
12 tested and approved by the commission's independent testing
13 laboratory, and that has not been approved for use in this state
14 by the commission, the permittee shall be fined:

15 (1) Five thousand dollars for a first violation;

16 (2) Ten thousand dollars for a second violation.

17 (c) For each subsequent violation, the fine imposed by the
18 commission shall increase by ten thousand dollars.

§29-22B-1605. Civil penalties applicable to manufacturers.

1 (a) For shipping a video lottery terminal into this state to a
2 person who does not have a permit issued by the commission
3 under this article, the manufacturer shall be fined:

4 (1) One thousand dollars for a first violation;

5 (2) Five thousand dollars for a second violation; and

6 (3) Ten thousand dollars for a third violation.

7 (b) For each subsequent violation, the fine imposed by the
8 commission shall increase by ten thousand dollars.

9 (c) For shipping a video lottery terminal into this state that
10 is not identical to a video lottery terminal make and model
11 approved by the commission, including the electronic computer
12 components, the random number generator, the coin acceptor,

13 the bill acceptor, and the cabinet in which the video lottery
14 terminal is housed, the manufacturer shall be fined:

15 (1) One thousand dollars for a first violation;

16 (2) Five thousand dollars for a second violation; and

17 (3) Ten thousand dollars for a third violation.

18 (d) For each subsequent violation, the fine imposed by the
19 commission shall increase by ten thousand dollars.

§29-22B-1606. Civil penalties for failure of licensees to perform duties.

1 A person who fails to perform any of the duties or obliga-
2 tions created and imposed upon them by the provisions of this
3 article or legislative rule of the commission is subject to a civil
4 penalty as may be determined by the commission in an amount
5 not to exceed ten thousand dollars.

§29-22B-1607. Civil action to collect penalty.

1 (a) The commission may collect any money penalty
2 imposed pursuant to this article by instituting civil action in any
3 court of this state having jurisdiction over the named defendant.

4 (b) Collection shall be barred unless the civil action is
5 commenced within six years after the later of (1) the date on
6 which the prohibited conduct establishing the cause of action
7 occurred, or (2) the date on which the commission first knew or
8 should reasonably have known the prohibited conduct had
9 occurred.

PART 17. CRIMINAL OFFENSES.

**§29-22B-1701. Financial interest of director, etc.; receiving re-
ward from interested party; criminal penalty;
application of bribery statute.**

1 (a) Neither the director of the commission, nor any member
2 or employee of the commission, may be financially interested,
3 or have any beneficial personal interest, direct or indirect, in
4 any person furnishing video lottery terminals or video lottery
5 games, or in any person who is a bidder for video lottery
6 terminals, or who is a holder of a license issued under this
7 article.

8 (b) Neither the director of the commission, nor any member
9 or employee of the commission, may accept or receive, directly
10 or indirectly, from any person known by the director, commis-
11 sion member or employee of the commission to be interested in
12 any bid, contract or licensee under this article, by rebate, gift or
13 otherwise, any money or other thing of value whatsoever, or
14 any promise, obligation or contract for future reward, or
15 compensation.

16 (c) A person who violates this section shall be guilty of a
17 misdemeanor and, upon conviction thereof, shall be confined in
18 jail not less than three months nor more than one year, or fined
19 not less than fifty nor more than one thousand dollars, or both,
20 in the discretion of the court: *Provided*, That any person who
21 violates any of the provisions of subsection (b) of this section
22 under circumstances constituting the crime of bribery under the
23 provisions of section 61-5A-3 of this code, shall, upon convic-
24 tion of bribery, be punished as provided in article 61-5A-1, *et*
25 *seq.*, of this code.

§29-22B-1702. Criminal penalties for unlawful inducement.

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

7 (b) Any person who gives a person any thing of value to
8 induce the other to refrain from placing a video lottery terminal
9 at a restricted access adult-only facility is guilty of a misde-
10 meanor and, upon conviction, shall be fined not more than ten
11 thousand dollars and, in addition, shall be subject to a civil
12 penalty payable to the commission of five hundred thousand
13 dollars.

**§29-22B-1703. Criminal penalty for unauthorized game on autho-
rized video lottery terminal.**

1 (a) A licensee who places a video lottery game on a video
2 lottery terminal that is allowed under this article without
3 authority of the commission to do so is guilty of a misdemeanor
4 and, upon conviction thereof, shall for a first conviction be
5 confined in a county or regional jail for a term of not more than
6 one year, and fined not more than five thousand dollars, except
7 that, in the case of a person other than an individual, the amount
8 of the fine imposed may be not more than twenty-five thousand
9 dollars.

10 (b) A second and each subsequent offense under this
11 section shall be a felony and, upon conviction thereof, the
12 person shall be confined in a state correctional facility for a
13 term of not less than one year nor more than three years and
14 fined not less than five thousand dollars nor more than ten
15 thousand dollars, except that in the case of a person other than
16 an individual, the fine may not be less than twenty-five thou-
17 sand dollars nor more than fifty thousand dollars.

**§29-22B-1704. Criminal penalty for unauthorized video lottery
terminal.**

1 (a) A licensee who places a video gambling machine into
2 play is guilty of a misdemeanor and, upon conviction thereof,
3 shall for a first conviction be confined in a county or regional
4 jail for a term of not more than one year, and fined not less than

5 five thousand dollars nor more than ten thousand dollars, except
6 that, in the case of a person other than an individual, the fine
7 may not be less than twenty thousand dollars nor more than
8 thirty thousand dollars.

9 (b) A second and each subsequent offense under this
10 section shall be a felony and, upon conviction thereof, the
11 person shall be confined in a state correctional facility for a
12 term of not less than one year nor more than three years and
13 fined not less than ten thousand dollars nor more than twenty
14 thousand dollars, except that in the case of a person other than
15 an individual, the fine may not be less than twenty-five thou-
16 sand dollars nor more than fifty thousand dollars.

§29-22B-1705. Criminal penalty for possession of video gambling machine.

1 (a) After December 31, 2001, any person who has a video
2 gambling machine in their actual or constructive possession in
3 this state is guilty of a felony and, upon conviction thereof,
4 shall for a first conviction be confined in a state correctional
5 facility for a term of not less than one year nor more than three
6 years, and fined not less than fifty thousand dollars nor more
7 than one hundred thousand dollars, for each video gambling
8 machine in the person's actual or constructive possession in this
9 state, except that, in the case of a person other than an individ-
10 ual, the fine may not be less than one hundred thousand dollars
11 nor more than five hundred thousand dollars for each video
12 gambling machine in the person's actual or constructive
13 possession in this state.

14 (b) For any second or subsequent conviction under this
15 section the person shall be confined in a state correctional
16 facility for a term of not less than two years nor more than five
17 years, and fined not less than one hundred thousand dollars nor
18 more than five hundred thousand dollars, for each video

19 gambling machine in their actual or constructive possession in
20 this state, except that, in the case of a person other than an
21 individual, the fine may not be less than five hundred thousand
22 dollars nor more than one million dollars for each video
23 gambling machine in the person's actual or constructive
24 possession in this state.

§29-22B-1706. Criminal penalty for expired operator or limited video lottery retailer's license.

1 (a) A person who operates, carries on or exposes for play a
2 video lottery game or video lottery terminal after the person's
3 license has expired and prior to the actual renewal of the license
4 is guilty of a misdemeanor and, upon conviction thereof, shall
5 for a first conviction be confined in a county or regional jail for
6 not more than one year or fined not less than one thousand
7 dollars nor more than five thousand dollars, except that, in the
8 case of a person other than an individual, the amount of the fine
9 imposed may not be less than ten thousand dollars nor more
10 than twenty-five thousand dollars.

11 (b) A second and each subsequent offense under this
12 section shall be a felony and, upon conviction thereof, the
13 person shall be confined in a state correctional facility for a
14 term of not less than one year nor more than three years and
15 fined not less than ten thousand dollars nor more than twenty
16 thousand dollars, except that in the case of a person other than
17 an individual, the fine may not be less than twenty-five thou-
18 sand dollars nor more than fifty thousand dollars.

§29-22B-1707. Criminal penalty for possession of altered or nonconforming video lottery terminal, device or related material.

1 (a) A person who possesses any video lottery terminal that
2 is not a video gambling machine or possesses any other device,
3 equipment or material which the person knows has been

4 manufactured, distributed, sold, tampered with or serviced in
5 violation of the provisions of this article is guilty of a misde-
6 meanor and, upon conviction thereof, shall for a first conviction
7 be confined in a county or regional jail not more than one year
8 and fined not less than one thousand dollars nor more than five
9 thousand dollars, except that, in the case of a person other than
10 an individual, the amount of the fine imposed may be not less
11 than five thousand dollars nor more than twenty-five thousand
12 dollars.

13 (b) A second and each subsequent offense under this
14 section shall be a felony and, upon conviction thereof, the
15 person shall be confined in a state correctional facility for a
16 term of not less than one year nor more than three years and
17 fined not less than five thousand dollars nor more than
18 twenty-five thousand dollars, except that in the case of a person
19 other than an individual, the fine may not be less than fifty
20 thousand dollars nor more than one hundred thousand dollars.

**§29-22B-1708. Criminal penalty for tampered game, terminal,
device or other equipment.**

1 (a) A person who knowingly conducts, carries on, operates
2 or exposes for play, or allows to be conducted, carried on,
3 operated or exposed for play, any video lottery game, video
4 lottery terminal or other device, equipment or material which
5 has in any manner been tampered with or placed in a condition
6 or operated in a manner the result of which tends to deceive the
7 public or tends to alter the normal random selection of charac-
8 teristics or the normal chance of the video lottery game which
9 could determine or alter the result of the game is guilty of a
10 misdemeanor and, upon conviction thereof, shall for a first
11 conviction be confined in a county or regional jail not more
12 than one year and fined not less than one thousand dollars nor
13 more than five thousand dollars, except that, in the case of a
14 person other than an individual, the amount of the fine imposed

15 may be not less than twenty-five thousand dollars nor more than
16 fifty thousand dollars.

17 (b) A second and each subsequent offense under this
18 section shall be a felony and, upon conviction thereof, the
19 person shall be confined in a state correctional facility for a
20 term of not less than one year nor more than three years and
21 fined not less than five thousand dollars nor more than
22 twenty-five thousand dollars, except that in the case of a person
23 other than an individual, the fine may be not less than fifty
24 thousand dollars nor more than one hundred thousand dollars.

§29-22B-1709. Criminal penalty for deceptive practices.

1 (a) A person who knowingly conducts, carries on, operates
2 or exposes for play, or allows to be conducted, carried on,
3 operated or exposed for play, any video lottery game, video
4 lottery terminal, data line connection with the central control
5 computer, or other device, equipment or material which has in
6 any manner been tampered with or placed in a condition or
7 operated in a manner the result of which tends to deceive the
8 state lottery commission or tends to alter the accurate recording
9 of credits played and credits won by the commission's central
10 control computer, or the central control computer's ability to
11 disable and cause not to operate any or all video lottery
12 terminals of a licensed limited video lottery retailer, for the first
13 offense is guilty of a misdemeanor and, upon conviction
14 thereof, shall be confined in a county or regional jail not more
15 than one year and fined not more than five thousand dollars,
16 except that, in the case of a person other than an individual, the
17 amount of the fine imposed may be not more than fifty thou-
18 sand dollars.

19 (b) A second and each subsequent offense under this
20 section shall be a felony and, upon conviction thereof, the
21 person shall be confined in a state correctional facility for at

22 least one year but not more than five years, and fined not less
23 than one thousand dollars nor more than five thousand dollars,
24 except that when the person is not an individual, the amount of
25 the fine imposed may be not less than five thousand dollars nor
26 more than fifty thousand dollars.

§29-22B-1710. Employment of unlicensed person who is required to be licensed.

1 (a) A person who employs or continues to employ an
2 individual not issued a license under the provisions of this
3 article in a position with duties which would require a license
4 under the provisions of this article is guilty of a misdemeanor
5 and, upon conviction thereof, shall for a first offense be
6 confined in a county or regional jail for not more than one year
7 and fined not more than five thousand dollars, except that, in
8 the case of a person other than an individual, the amount of the
9 fine imposed may be not more than twenty-five thousand
10 dollars.

11 (b) A second and each subsequent offense under this
12 section shall be a felony and, upon conviction thereof, the
13 person shall be confined in a state correctional facility for a
14 term of not less than one year nor more than three years, and
15 fined not less than five thousand dollars nor more than
16 twenty-five thousand dollars, except that, in the case of a person
17 other than an individual, the fine may not be less than fifty
18 thousand dollars nor more than one hundred thousand dollars.

§29-22B-1711. Criminal penalty for unlicensed person to work in a position for which license is required.

1 (a) An individual who is required by this article to obtain a
2 license from the commission to work as a limited video lottery
3 retailer or service technician but who works as a limited video
4 lottery retailer or service technician without obtaining the
5 requisite license, as provided for in this article, or is employed

6 in a position with duties which would require a license under
7 the provisions of this article is guilty of a misdemeanor and,
8 upon conviction thereof, shall be confined in a county or
9 regional jail not more than one year and fined not more than ten
10 thousand dollars.

11 (b) A second and each subsequent offense under this
12 section shall be a misdemeanor and, upon conviction thereof,
13 the person shall be confined in a county or regional jail for a
14 term not to exceed one year and fined not less than five
15 thousand dollars nor more than twenty thousand dollars.

**§29-22B-1712. Criminal penalty for use of device that gives
player an unauthorized advantage.**

1 (a) A person who, while a video lottery game is being
2 played, uses, or assists another person in the use of, an elec-
3 tronic, electrical or mechanical device which is designed,
4 constructed or programmed specifically for use in obtaining an
5 advantage at playing any video lottery game is guilty of a
6 felony and, upon conviction thereof, shall for a first offense be
7 confined in a state correctional facility for at least one year but
8 not more than five years, or shall be fined not less than one
9 thousand dollars nor more than five thousand dollars, or both.

10 (b) A second and each subsequent offense under this
11 section shall be a felony and, upon conviction thereof, the
12 person shall be confined in a state correctional facility for a
13 term of not less than one year nor more than three years, and
14 fined not less than five thousand dollars nor more than
15 twenty-five thousand dollars, except that, in the case of a person
16 other than an individual, the fine may be not less than fifty
17 thousand dollars nor more than one hundred thousand dollars.

§29-22B-1713. Criminal penalty for violation of rules of play.

1 A person who knowingly violates a provision of this article
2 or the rules of play or game rules of a video lottery game, and
3 who profits thereby in an amount equal to one thousand dollars
4 or more, is guilty of a felony and, upon conviction thereof, shall
5 be imprisoned in the state correctional facility not less than one
6 nor more than ten years or, in the discretion of the court, be
7 confined in jail for not more than one year and be fined not less
8 than two thousand dollars nor more than five thousand dollars.
9 If the person profits thereby in an amount less than one thou-
10 sand dollars, that person is guilty of a misdemeanor and, upon
11 conviction thereof, shall be confined in a county or regional jail
12 for a term not to exceed one year or fined an amount not less
13 than one thousand dollars nor more than two thousand five
14 hundred dollars, or both.

**§29-22B-1714. Criminal penalty for corrupt combinations, collu-
sions or conspiracies prohibited.**

1 It shall be unlawful for any person to corruptly combine,
2 collude or conspire with one or more other persons with respect
3 to the purchasing or leasing of video lottery terminals or
4 associated equipment, or the provisions of services, or the
5 bidding of authorizations to own or lease video lottery termi-
6 nals. Any person who violates any provision of this section
7 shall be guilty of a felony, and, upon conviction thereof, shall
8 be confined in a state correctional facility for a term of not less
9 than one year nor more than five years, and be fined not less
10 than ten thousand dollars nor more than twenty-five thousand
11 dollars.

**PART 18. SEIZURE AND DESTRUCTION OF
CONTRABAND; FORFEITURES.**

§29-22B-1801. Video gambling machines declared contraband.

1 Effective January 1, 2002, and thereafter, video gambling
2 machines are per se illegal gambling devices which may be

3 seized and destroyed as illegal contraband by any
4 law-enforcement agency having jurisdiction over the political
5 subdivision in which the device is found, and the owner or
6 owners of the device have no right to compensation for the
7 seizure and destruction of any video gambling machine.

**§29-22B-1802. Legislative findings regarding seizure and sale of
video gambling machines and other property.**

1 The Legislature hereby finds and declares that the seizure
2 and sale of items under the provisions of this part 18 is not
3 contemplated to be a forfeiture as the same is used in article 12,
4 section 5 of the West Virginia Constitution and, to the extent
5 that a seizure and sale may be found to be such a forfeiture, the
6 Legislature hereby finds and declares that the proceeds from a
7 seizure and sale under this article is not part of net proceeds as
8 the same is contemplated by such article 12, section 5 of the
9 West Virginia Constitution.

§29-22B-1803. Items subject to forfeiture.

1 (a) The following items are subject to forfeiture:

2 (1) Any video gambling machine present in this state after
3 January 1, 2002;

4 (2) All property found with the video gambling machine
5 that in any way facilitates its operation for any purpose;

6 (3) Any video lottery terminal registered under this article
7 that is found on the premises where a video gambling machine
8 is found;

9 (4) All conveyances, including aircraft, vehicles or vessels,
10 which are used, have been used, or are intended for use, to
11 transport, or in any manner to facilitate the transportation, sale,

12 receipt, possession or concealment of a video gambling
13 machine, except as follows:

14 (A) No conveyance used by any person as a common
15 carrier in the transaction of business as a common carrier shall
16 be forfeited under this section unless it appears that the person
17 owning such conveyance is a consenting party or privy to a
18 violation of this article;

19 (B) No conveyance shall be forfeited under the provisions
20 of this article if the person owning the conveyance establishes
21 that he or she neither knew, nor had reason to know, that the
22 conveyance was being employed or was likely to be employed
23 in a violation of this article; and

24 (C) No bona fide security interest or other valid lien in any
25 conveyance shall be forfeited under the provisions of this
26 article, unless the state proves by a preponderance of the
27 evidence that the holder of such security interest or lien either
28 knew, or had reason to know, that such conveyance was being
29 used or was likely to be used in a violation of this article.

30 (5) All books, records and materials, including microfilm,
31 tapes and data which are used, or have been used, or are
32 intended for use with a gray gambling device;

33 (6) All moneys, negotiable instruments, securities or other
34 things of value furnished or intended to be furnished in viola-
35 tion of this article by any person in exchange for a gray
36 gambling device or in exchange for playing or operating a gray
37 gambling device, all proceeds traceable to such an exchange,
38 and all moneys, negotiable instruments and securities used, or
39 which have been used, or which are intended to be used to
40 facilitate any violation of this article: *Provided*, That no
41 property may be forfeited under this subdivision, to the extent
42 of the interest of an owner, by reason of any act or omission

43 established by that owner to have been committed or omitted
44 without his or her knowledge or consent; and

45 (7) All real property, including any right, title and interest
46 in any lot or tract of land, and any appurtenances or improve-
47 ments, which are used, or have been used, or are intended to be
48 used, in any manner or part, to commit, or to facilitate the
49 commission of a violation of this article punishable by more
50 than one year imprisonment: *Provided*, That no property may
51 be forfeited under this subdivision, to the extent of an interest
52 of an owner, by reason of any act or omission established by
53 that owner to have been committed or omitted without his or
54 her knowledge or consent.

55 (b) The requirements of this section pertaining to the
56 removal of seized property are not mandatory in the case of real
57 property and the appurtenances thereto.

58 (c) Property subject to forfeiture under this section may be
59 seized by any person granted law-enforcement powers (herein-
60 after referred to as the "appropriate person" in section 22B-
61 1804).

§29-22B-1804. Procedure for seizure of forfeitable property.

1 (a) Seizure of property made subject to forfeiture by the
2 provisions of sections 22B-1802 and 22B-1803 may be made
3 upon process issued by any court of record having jurisdiction
4 over the property.

5 (b) Notwithstanding the provisions of subsection (a) of this
6 section, seizure of property subject to forfeiture by the provi-
7 sions of this article may be made without process if:

8 (1) The seizure is incident to a lawful arrest or pursuant to
9 a search under a search warrant or an inspection warrant;

10 (2) The property subject to seizure has been the subject of
11 a prior judgment in favor of the state in a forfeiture proceeding
12 based upon this section; or

13 (3) The appropriate person has probable cause to believe
14 that the property was used or intended for use in violation of
15 this article.

16 (c) In the event of seizure pursuant to subsection (b) of this
17 section, forfeiture proceedings shall be instituted within ninety
18 days of the seizure thereof.

19 (d) Property taken or detained under this section shall not
20 be subject to replevin, but is deemed to be in the custody of the
21 appropriate person, subject only to the orders and decrees of the
22 court having jurisdiction over the forfeiture proceedings. When
23 property is seized under this article, the appropriate person
24 may:

25 (1) Place the property under seal;

26 (2) Remove the property to a place designated by him or
27 her;

28 (3) Require the appropriate law-enforcement agency to take
29 custody of the property and remove it to an appropriate location
30 for disposition in accordance with law; or

31 (4) In the case of seized moneys, securities or other
32 negotiable instruments, place the assets in any interest-bearing
33 depository insured by an agency of the federal government.

34 The requirements of this subsection (d), pertaining to the
35 removal of seized property, are not mandatory in the case of
36 real property and appurtenances thereto.

§29-22B-1805. Procedures for forfeiture.

1 (a) The following procedures for forfeiture shall be
2 followed:

3 (1) Any proceeding wherein the state seeks forfeiture of
4 property subject to forfeiture under this section shall be a civil
5 proceeding. A petition for forfeiture may be filed on behalf of
6 the state and any law-enforcement agency making a seizure
7 under this article by the prosecuting attorney of a county, or
8 duly appointed special prosecutor;

9 (2) A petition for forfeiture may be filed and proceedings
10 held thereon in the circuit court of the county wherein the
11 seizure was made or the circuit court of the county wherein any
12 owner of the property subject to forfeiture may reside;

13 (3) Any civil trial stemming from a petition for forfeiture
14 brought under this part 18 at the demand of either party shall be
15 by jury;

16 (4) A petition for forfeiture of the seized property shall be
17 filed within ninety days after the seizure of the property in
18 question. The petition shall be verified by oath or affirmation of
19 a law-enforcement officer representing the law-enforcement
20 agency responsible for the seizure or the prosecuting attorney
21 and shall contain the following:

22 (A) A description of the property seized;

23 (B) A statement as to who is responsible for the seizure;

24 (C) A statement of the time and place of seizure;

25 (D) The identity of the owner or owners of the property, if
26 known;

27 (E) The identity of the person or persons in possession of
28 the property at the time seized, if known;

29 (F) A statement of facts upon which probable cause for
30 belief that the seized property is subject to forfeiture pursuant
31 to the provisions of this article is based;

32 (G) The identity of all persons or corporations having a
33 perfected security interest or lien in the subject property, as well
34 as the identity of all persons or corporations known to the
35 affiant who may be holding a possessory or statutory lien
36 against such property; and

37 (H) A prayer for an order directing forfeiture of the seized
38 property to the state, and vesting ownership of such property in
39 the state.

40 (b) At the time of filing or as soon as practicable thereafter,
41 a copy of the petition for forfeiture shall be served upon the
42 owner or owners of the seized property, as well as all holders of
43 a perfected security interest or lien or of a possessory or
44 statutory lien in the same class, if known. Should diligent
45 efforts fail to disclose the lawful owner or owners of the seized
46 property, a copy of the petition for forfeiture shall be served
47 upon any person who was in possession or alleged to be in
48 possession of the property at the time of seizure, where such
49 person's identity is known. The above service shall be made
50 pursuant to the provisions of the West Virginia Rules of Civil
51 Procedure. Any copy of the petition for forfeiture so served
52 shall include a notice substantially as follows:

53 "To any claimant to the within described property: You
54 have the right to file an answer to this petition setting forth your
55 title in, and right to possession of, the property within thirty
56 days from the service hereof. If you fail to file an answer, a
57 final order forfeiting the property to the state will be entered,
58 and such order is not subject to appeal."

59 If no owner or possessors, lienholders or holders of a
60 security interest be found, then such service may be made by
61 Class II legal publication in accordance with the provisions of
62 article 59-3-1, *et seq.*, of this code, and the publication area
63 shall be the county wherein such property was located at the
64 time of seizure and the county wherein the petition for forfei-
65 ture is filed.

66 (c) In addition to the requirements of subsection (b) of this
67 section, the prosecuting attorney or law-enforcement officer
68 upon whose oath or affirmation the petition for forfeiture is
69 based, shall be responsible for the publication of a further
70 notice. Such further notice that a petition for forfeiture has been
71 filed shall be published by Class II legal advertisement in
72 accordance with article 59-3-1, *et seq.*, of this code. The
73 publication area shall be the county wherein the property was
74 seized and the county wherein the petition for forfeiture is filed.
75 The notice shall advise any claimant to the property of their
76 right to file a claim on or before the date set forth in the notice,
77 which date shall not be less than thirty days from the date of the
78 first publication. The notice shall specify that any claim must
79 clearly state the identity of the claimant and an address where
80 legal process can be served upon that person. In addition, such
81 notice shall contain the following information:

82 (1) A description of the property seized;

83 (2) A statement as to who is responsible for the seizure;

84 (3) A statement of the time and place of seizure;

85 (4) The identity of the owner or owners of the property, if
86 known;

87 (5) The identity of the person or persons in possession of
88 the property at the time of seizure, if known; and

89 (6) A statement that prayer for an order directing forfeiture
90 of the seized property to the state, and vesting ownership of
91 such property in the state, shall be requested of the court.

92 (d) If no answer or claim is filed within thirty days of the
93 date of service of the petition pursuant to subsection (b) of this
94 section, or within thirty days of the first publication pursuant to
95 subsection (b) of this section, the court shall enter an order
96 forfeiting the seized property to the state. If any claim to the
97 seized property is timely filed, a time and place shall be set for
98 a hearing upon such claim. The claimant or claimants shall be
99 given notice of such hearing not less than ten days prior to the
100 date set for the hearing.

101 (e) At the hearing upon the claim or claims, the state shall
102 have the burden of proving by a preponderance of the evidence
103 that the seized property is subject to forfeiture pursuant to the
104 provisions of this part 18.

105 (f) Any order forfeiting property to the state and entered
106 pursuant to this section perfects the state's right, title and
107 interest in the forfeited property and relates back to the date of
108 seizure: *Provided*, That in any proceeding under this article the
109 circuit court shall in its final order make specific findings with
110 respect to whether or not probable cause to seize such property
111 existed at the time of such seizure.

112 (g) During the pendency of a forfeiture proceeding, it is
113 unlawful for any property owner or holder of a bona fide
114 security interest or other valid lien-holder to transfer or attempt
115 to transfer any ownership interest or security interest in seized
116 property with the intent to defeat the purpose of this article, and
117 the court wherein the petition for forfeiture is filed may enjoin
118 a property owner or holder of a security interest or other
119 lien-holder from making such a transfer should one come to its
120 attention. Any such transfer, that is made in violation of the

121 provisions of this subsection, shall have no effect upon an order
122 of the court forfeiting seized property to the state if a notice of
123 lis pendens is filed prior to the recording of the instrument of
124 transfer.

125 (h) The court may void any transfer of property made
126 before or after a forfeiture proceeding has been commenced,
127 which is subject to forfeiture, if the transfer was not to a bona
128 fide purchaser without notice for value.

129 (i) An appeal of a decision of the circuit court concerning
130 a forfeiture proceeding brought pursuant to this part 18 must be
131 filed within one hundred twenty days of the date of entry of the
132 final appealable order. The appellant shall be required to give
133 notice of intent to appeal within thirty days of the entry of such
134 appealable order.

§29-22B-1806. Disposition of forfeited moneys, securities or other negotiable instruments.

1 (a) Whenever moneys, securities or other negotiable
2 instruments are forfeited under the provisions of this part 18,
3 such proceeds shall be distributed as follows:

4 (1) Ten percent of the proceeds shall be tendered to the
5 office of the prosecuting attorney which initiated the forfeiture
6 proceeding; and

7 (2) The balance shall be deposited in a special
8 law-enforcement investigation fund. The fund may be placed in
9 any interest-bearing depository insured by an agency of the
10 federal government. The fund shall be administered by the chief
11 of the law-enforcement agency that seized the forfeited prop-
12 erty.

13 (b) No funds shall be expended from the special
14 law-enforcement investigation fund except as follows:

15 (1) In the case of the funds belonging to the West Virginia
16 state police, the funds shall only be expended at the direction of
17 the superintendent and in accordance with the provisions of
18 section 5A-2-15 and subsection 12-2-2(j) of this code;

19 (2) In the case of funds belonging to the office of either the
20 sheriff or prosecuting attorney of any county in which the
21 special fund has been created, the funds therein may only be
22 expended in the manner provided in sections 7-5-4 and 5 of this
23 code; and

24 (3) In the case of funds belonging to the police department
25 of any municipality in which the special fund has been created,
26 the funds therein may only be expended in the manner provided
27 in section 8-13-22 of this code.

**§29-22B-1807. Disposition of other forfeited property; distribu-
tion of proceeds.**

1 (a) When property other than that referred to in section
2 22B-1806 of this part is forfeited under this section, the circuit
3 court ordering the forfeiture, upon application by the prosecut-
4 ing attorney or the chief of the law-enforcement agency that
5 seized said forfeited property, may direct that:

6 (1) Title to the forfeited property be vested in the
7 law-enforcement agency so petitioning; or

8 (2) The law-enforcement agency responsible for the seizure
9 retain the property for official use; or

10 (3) The forfeited property shall be offered at public auction
11 to the highest bidder for cash. Notice of such public auction
12 shall be published as a Class III legal advertisement in accor-
13 dance with article 59-3-1, *et seq.*, of this code. The publication
14 area shall be the county where the public auction will be held.

15 (b) When a law-enforcement agency receives property
16 pursuant to this section, the court may, upon request of the
17 prosecuting attorney initiating the forfeiture proceeding, require
18 the law-enforcement agency to pay unto the office of said
19 prosecuting attorney a sum not to exceed ten percent of the
20 value of the property received to compensate said office for
21 actual costs and expenses incurred.

22 (c) The proceeds of every public sale conducted pursuant to
23 this section shall be paid and applied as follows: First, to the
24 balance due on any security interest preserved by the court;
25 second, to the costs incurred in the storage, maintenance and
26 security of the property; third, to the costs incurred in selling
27 the property.

28 (d) Any proceeds of a public sale remaining after distribu-
29 tion pursuant to this section shall be distributed as follows:

30 (1) Ten percent of such proceeds shall be tendered to the
31 office of the prosecuting attorney who initiated the forfeiture
32 proceeding; and

33 (2) The balance shall be deposited in a special
34 law-enforcement investigation fund. Such fund shall be
35 administered by the chief of the law-enforcement agency that
36 seized the forfeited property sold and shall take the form of an
37 interest-bearing account with any interest earned to be com-
38 pounded to the fund. Any funds deposited in the special
39 law-enforcement investigative fund pursuant to this article shall
40 be expended only to defray the costs of protracted or complex
41 investigations, to provide additional technical equipment or
42 expertise, to provide matching funds to obtain federal grants or
43 for such other law-enforcement purposes as the chief of the
44 law-enforcement agency may deem appropriate; however, these
45 funds may not be utilized for regular operating needs.

46 (e) If more than one law-enforcement agency was substan-
47 tially involved in effecting the seizure and forfeiture of prop-
48 erty, the court wherein the petition for forfeiture was filed shall
49 equitably distribute the forfeited property among the
50 law-enforcement agencies. In the event of a public sale of such
51 property pursuant to subsection (a) of this section, the court
52 shall equitably distribute any proceeds remaining after distribu-
53 tion pursuant to subsection (c) and subdivision (1), subsection
54 (d) of this section, among such law-enforcement agencies for
55 deposit into their individual special law-enforcement investiga-
56 tive fund. Equitable distribution shall be based upon the overall
57 contribution of the individual law-enforcement agency to the
58 investigation which led to the seizure.

59 (f) Upon the sale of any forfeited property for which title or
60 registration is required by law, the state shall issue a title or
61 registration certificate to any bona fide purchaser at a public
62 sale of the property conducted pursuant to this section. Upon
63 the request of the law-enforcement agency receiving, pursuant
64 to the order of the court, or electing to retain, pursuant to this
65 section, any forfeited property for which title or registration is
66 required by law, the state shall issue a title or registration
67 certificate to the appropriate governmental body.

68 (g) Any funds expended pursuant to the provisions of this
69 section, shall only be expended in the manner provided in
70 subsection 60A-7-705(b), of this code.

71 (h) Every prosecuting attorney or law-enforcement agency
72 receiving forfeited property or proceeds from the sale of
73 forfeited property pursuant to this part 18 shall submit an
74 annual report to the body which has budgetary authority over
75 such agency. Such report shall specify the type and approximate
76 value of all forfeited property and the amount of proceeds from
77 the sale of forfeited property received in the preceding year. No

78 county or municipality may use anticipated receipts of forfeited
79 property in their budgetary process.

80 (i) In lieu of the sale of any forfeited property subject to a
81 bona fide security interest preserved by an order of the court,
82 the law-enforcement agency receiving the forfeited property
83 may pay the balance due on any security interest preserved by
84 the court from funds budgeted to the office or department or
85 from the special fund and retain possession of the forfeited
86 property for official use pursuant to this section.

87 (j) In every case where property is forfeited, disposition of
88 the forfeited property, in accordance with this part 18, shall be
89 made within six months of the date upon which the court of
90 jurisdiction orders forfeiture. Should the office or agency
91 receiving the property fail either to place the property in official
92 use or dispose of the property in accordance with law, the court
93 of jurisdiction shall cause disposition of the property to be
94 made with any proceeds therefrom to be awarded to the state.

95 (k) No disposition shall occur until all applicable periods
96 for filing a notice of intent to appeal has expired and no party
97 in interest shall have filed such notice. The filing of the notice
98 of intent to appeal shall stay any such disposition until the
99 appeal has been finally adjudicated or until the appeal period of
100 one hundred eighty days has expired without an appeal having
101 actually been taken or filed, unless a valid extension of the
102 appeal has been granted by the circuit court under the provi-
103 sions of section 58-4-7 of this code.

104 (l) The special law-enforcement investigative funds of each
105 law-enforcement agency may be placed in an interest-bearing
106 depository insured by the federal government.

PART 19. MISCELLANEOUS PROVISIONS.

§29-22B-1901. Effect of this article on certain taxes.

1 (a) Notwithstanding any provision of this code to the
2 contrary, effective the first day of July, 2002, persons who hold
3 a current operator's license or a current limited video lottery
4 retailer's license issued under this article shall be exempt from
5 paying the taxes imposed by articles 11-15-1, *et seq.*, and
6 11-15A-1, *et seq.*, of this code on their purchases of video
7 lottery terminals and video lottery games.

8 (b) Notwithstanding any provision of this code to the
9 contrary, effective the first day of July, 2002, the consideration
10 paid by a patron of a restricted access adult-only facility to play
11 of video lottery games shall be exempt from the tax imposed by
12 article 11-15-1, *et seq.*, of this code.

13 (c) Notwithstanding the provisions of section 8-13-4 of this
14 code to the contrary, effective the first day of July, 2002,
15 municipalities may not impose the license fees imposed by this
16 article on manufacturers, operators, limited video lottery
17 retailers and service technicians. Municipalities may continue
18 to impose any other license fees they are allowed to impose
19 under this code.

20 (d) Notwithstanding any provision of this code to the
21 contrary, effective the first day of July, 2002, municipalities
22 may not impose the municipal business and occupation taxes
23 imposed pursuant to section 8-13-5 of this code, or an amuse-
24 ment tax imposed pursuant to section 8-13-6 of this code on the
25 income of a permittee of video lottery terminals from income
26 derived directly from activities conducted pursuant to the
27 provisions of this article.

28 (e) Notwithstanding any provision of this code to the
29 contrary, effective the first day of July, 2002, municipalities
30 may not impose the municipal business and occupation taxes
31 imposed pursuant to section 8-13-5 of this code on payments a
32 limited video lottery retailer receives from an operator of video

33 lottery terminals for activities conducted pursuant to the
34 provisions of this article.

§29-22B-1902. Preemption of state laws or local regulation.

1 (a) No state or local law or regulation providing any
2 penalty, disability, restriction, regulation or prohibition for the
3 manufacture, transportation, storage, distribution, advertising,
4 possession or sale of any lottery video lottery terminal, games
5 or materials or for the operation of any lottery shall apply to
6 operations by the lottery commission or persons licensed
7 pursuant to this article or operations or activities that are
8 authorized in this article.

9 (b) The provisions of this article preempt all regulations,
10 rules, ordinances and laws of any county or municipality in
11 conflict herewith: *Provided*, That nothing herein shall invalidate
12 any zoning law, or Sunday closing law under article 61-10-1, *et*
13 *seq.*, of this code.

14 (c) Nothing in this article shall be deemed to permit the
15 operation of any lottery otherwise prohibited by the laws of this
16 state, not owned and operated by this state and permitted by this
17 article.

§29-22B-1903. Timing of implementation.

1 The Legislature finds and declares that the success of this
2 state's implementation of video lottery operations under this
3 article requires that the operations be phased in over a manage-
4 able transition period designed to allow careful regulation and
5 control of the implementation of operations under this article
6 and also to allow persons possessing devices that are declared
7 by this article to be contraband gambling devices a reasonable
8 opportunity to remove any existing devices from this state.

CHAPTER 7

(S. B. 1006 — By Senator Craigo)

[Passed April 23, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections nine and thirteen, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to racetracks; distributing proceeds from the purse fund to provide funds for pension plan for West Virginia thoroughbred racetrack backstretch personnel and their dependents; and distributing funds from unredeemed pari-mutuel tickets to provide funds for health and disability benefits for eligible active or disabled West Virginia jockeys and their dependents.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. HORSE AND DOG RACING.

**PART VI. PARI-MUTUEL SYSTEM OF WAGERING
AUTHORIZED; COMMISSIONS
DEDUCTED FROM PARI-MUTUEL POOLS.**

§19-23-9. Pari-mutuel system of wagering authorized; licensee authorized to deduct commissions from pari-mutuel pools; retention of breakage; auditing; minors.

§19-23-13. Disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; publication of notice; irredeemable tickets; stake races for dog tracks.

§19-23-9. Pari-mutuel system of wagering authorized; licensee authorized to deduct commissions from pari-mutuel pools; retention of breakage; auditing; minors.

1 (a) The pari-mutuel system of wagering upon the results of
2 any horse or dog race at any horse or dog race meeting con-
3 ducted or held by any licensee is hereby authorized, if and only
4 if such pari-mutuel wagering is conducted by the licensee
5 within the confines of the licensee's horse racetrack or dog
6 racetrack, and the provisions of section one, article ten, chapter
7 sixty-one of this code, relating to gaming shall not apply to the
8 pari-mutuel system of wagering in manner and form as pro-
9 vided for in this article at any horse or dog race meeting within
10 this state where horse or dog racing shall be permitted for any
11 purse by any licensee. A licensee shall permit or conduct only
12 the pari-mutuel system of wagering within the confines of the
13 licensee's racetrack at which any horse or dog race meeting is
14 conducted or held.

15 (b) A licensee is hereby expressly authorized to deduct a
16 commission from the pari-mutuel pools, as follows:

17 (1) The commission deducted by any licensee from the
18 pari-mutuel pools on thoroughbred horse racing, except from
19 thoroughbred horse racing pari-mutuel pools involving what is
20 known as multiple betting in which the winning pari-mutuel
21 ticket or tickets are determined by a combination of two or
22 more winning horses, shall not exceed seventeen and one-fourth
23 percent of the total of the pari-mutuel pools for the day. Out of
24 the commission, as is mentioned in this subdivision, the
25 licensee: (i) Shall pay the pari-mutuel pools tax provided for in
26 subsection (b), section ten of this article; (ii) shall make a
27 deposit into a special fund to be established by the licensee and
28 to be used for the payment of regular purses offered for
29 thoroughbred racing by the licensee, which deposits out of pari-

30 mutuel pools for each day during the months of January,
31 February, March, October, November and December shall be
32 seven and three hundred seventy-five one-thousandths percent
33 of the pari-mutuel pools and which, out of pari-mutuel pools for
34 each day during all other months, shall be six and eight hundred
35 seventy-five one-thousandths percent of the pari-mutuel pools,
36 which shall take effect beginning fiscal year one thousand nine
37 hundred ninety; (iii) shall, after allowance for the exclusion
38 given by subsection (b), section ten of this article, make a
39 deposit into a special fund to be established by the racing
40 commission and to be used for the payment of breeders, awards
41 and capital improvements as authorized by section thirteen-b of
42 this article, which deposits out of pari-mutuel pools shall from
43 the effective date of this section and for fiscal year one thou-
44 sand nine hundred eighty-five, be four-tenths percent; for fiscal
45 year one thousand nine hundred eighty-six, be seven-tenths
46 percent; for fiscal year one thousand nine hundred eighty-seven,
47 be one percent; for fiscal year one thousand nine hundred
48 eighty-eight, be one and one-half percent; and for fiscal year
49 one thousand nine hundred eighty-nine, and each year thereaf-
50 ter, be two percent of the pools; and (iv) shall pay one tenth of
51 one percent of the pari-mutuel pools into the general fund of the
52 county commission of the county in which the racetrack is
53 located, except if within a municipality, then to the municipal
54 general fund. The remainder of the commission shall be
55 retained by the licensee.

56 Each licensee that permits or conducts pari-mutuel wager-
57 ing at the licensee's thoroughbred horse racetrack shall annually
58 pay five hundred thousand dollars from the special fund
59 required by this section to be established by the licensee for the
60 payment of regular purses offered for thoroughbred racing by
61 the licensee into a special fund established by the racing
62 commission for transfer to a pension plan established by the
63 racing commission for all back-stretch personnel, including, but
64 not limited to, exercise riders, trainers, grooms and stable

65 forepersons licensed by the racing commission to participate in
66 horse racing in this state and their dependents.

67 The commission deducted by any licensee from the pari-
68 mutuel pools on thoroughbred horse racing involving what is
69 known as multiple betting in which the winning pari-mutuel
70 ticket or tickets are determined by a combination of two
71 winning horses shall not exceed nineteen percent and by a
72 combination of three or more winning horses shall not exceed
73 twenty-five percent of the total of such pari-mutuel pools for
74 the day. Out of the commission, as is mentioned in this para-
75 graph, the licensee: (i) Shall pay the pari-mutuel pools tax
76 provided for in subsection (b), section ten of this article; (ii)
77 shall make a deposit into a special fund to be established by the
78 licensee and to be used for the payment of regular purses
79 offered for thoroughbred racing by the licensee, which deposits
80 out of pari-mutuel pools for each day during the months of
81 January, February, March, October, November and December
82 for pools involving a combination of two winning horses shall
83 be eight and twenty-five one-hundredths percent and out of
84 pari-mutuel pools for each day during all other months shall be
85 seven and seventy-five one-hundredths percent of the pari-
86 mutuel pools; and involving a combination of three or more
87 winning horses for the months of January, February, March,
88 October, November and December the deposits out of the fund
89 shall be eleven and twenty-five one-hundredths percent of the
90 pari-mutuel pools; and which, out of pari-mutuel pools for each
91 day during all other months, shall be ten and seventy-five one-
92 hundredths percent of the pari-mutuel pools; (iii) shall, after
93 allowance for the exclusion given by subsection (b), section ten
94 of this article, make a deposit into a special fund to be estab-
95 lished by the racing commission and to be used for the payment
96 of breeders' awards and capital improvements as authorized by
97 section thirteen-b of this article, which deposits out of pari-
98 mutuel pools shall from the effective date of this section and for
99 fiscal year one thousand nine hundred eighty-five, be four-

100 tenths percent; for fiscal year one thousand nine hundred
101 eighty-six, be seven-tenths percent; for fiscal year one thousand
102 nine hundred eighty-seven, be one percent; for fiscal year one
103 thousand nine hundred eighty-eight, be one and one-half
104 percent; and for fiscal year one thousand nine hundred eighty-
105 nine, and each year thereafter, be two percent of the pools; and
106 (iv) shall pay one tenth of one percent of the pari-mutuel pools
107 into the general fund of the county commission of the county in
108 which the racetrack is located, except if within a municipality,
109 then to the municipal general fund. The remainder of the
110 commission shall be retained by the licensee.

111 The commission deducted by the licensee under this
112 subdivision may be reduced only by mutual agreement between
113 the licensee and a majority of the trainers and horse owners
114 licensed by subsection (a), section two of this article or their
115 designated representative. The reduction in licensee commis-
116 sions may be for a particular race, racing day or days or for a
117 horse race meeting. Fifty percent of the reduction shall be
118 retained by the licensee from the amounts required to be paid
119 into the special fund established by the licensee under the
120 provisions of this subdivision. The racing commission shall
121 promulgate any reasonable rules that are necessary to imple-
122 ment the foregoing provisions.

123 (2) The commission deducted by any licensee from the
124 pari-mutuel pools on harness racing shall not exceed seventeen
125 and one-half percent of the total of the pari-mutuel pools for the
126 day. Out of the commission the licensee shall pay the pari-
127 mutuel pools tax provided for in subsection (c), section ten of
128 this article and shall pay one tenth of one percent into the
129 general fund of the county commission of the county in which
130 the racetrack is located, except if within a municipality, then to
131 the municipal general fund. The remainder of the commission
132 shall be retained by the licensee.

133 (3) The commission deducted by any licensee from the
134 pari-mutuel pools on dog racing, except from dog racing pari-
135 mutuel pools involving what is known as multiple betting in
136 which the winning pari-mutuel ticket or tickets are determined
137 by a combination of two or more winning dogs, shall not
138 exceed sixteen and thirty one-hundredths percent of the total of
139 all pari-mutuel pools for the day. The commission deducted by
140 any licensee from the pari-mutuel pools on dog racing involv-
141 ing what is known as multiple betting in which the winning
142 pari-mutuel ticket or tickets are determined by a combination
143 of two winning dogs shall not exceed nineteen percent, by a
144 combination of three winning dogs shall not exceed twenty
145 percent, and by a combination of four or more winning dogs
146 shall not exceed twenty-one percent of the total of such pari-
147 mutuel pools for the day. The foregoing commissions are in
148 effect for the fiscal years one thousand nine hundred ninety and
149 one thousand nine hundred ninety-one. Thereafter, the commis-
150 sion shall be at the percentages in effect prior to the effective
151 date of this article unless the Legislature, after review, deter-
152 mines otherwise. Out of the commissions, the licensee shall pay
153 the pari-mutuel pools tax provided for in subsection (d), section
154 ten of this article and one tenth of one percent of such pari-
155 mutuel pools into the general fund of the county commission of
156 the county in which the racetrack is located. In addition, out of
157 the commissions, if the racetrack is located within a municipal-
158 ity, then the licensee shall also pay three tenths of one percent
159 of the pari-mutuel pools into the general fund of the municipal-
160 ity; or, if the racetrack is located outside of a municipality, then
161 the licensee shall also pay three tenths of one percent of the
162 pari-mutuel pools into the state road fund for use by the
163 division of highways in accordance with the provisions of this
164 subdivision. The remainder of the commission shall be retained
165 by the licensee.

166 For the purposes of this section, "municipality" means and
167 includes any Class I, Class II and Class III city and any Class

168 IV town or village incorporated as a municipal corporation
169 under the laws of this state prior to the first day of January, one
170 thousand nine hundred eighty-seven.

171 Each dog racing licensee, when required by the provisions
172 of this subdivision to pay a percentage of its commissions to the
173 state road fund for use by the division of highways, shall
174 transmit the required funds, in such manner and at such times
175 as the racing commission shall by procedural rule direct, to the
176 state treasurer for deposit in the state treasury to the credit of
177 the division of highways state road fund. All funds collected
178 and received in the state road fund pursuant to the provisions of
179 this subdivision shall be used by the division of highways in
180 accordance with the provisions of article seventeen-a, chapter
181 seventeen of this code for the acquisition of right-of-way for,
182 the construction of, the reconstruction of and the improvement
183 or repair of any interstate or other highway, secondary road,
184 bridge and toll road in the state. If on the first day of July, one
185 thousand nine hundred eighty-nine, any area encompassing a
186 dog racetrack has incorporated as a Class I, Class II or Class III
187 city or as a Class IV town or village, whereas such city, town or
188 village was not incorporated as such on the first day of January,
189 one thousand nine hundred eighty-seven, then on and after the
190 first day of July, one thousand nine hundred eighty-nine, any
191 balances in the state road fund existing as a result of payments
192 made under the provisions of this subdivision may be used by
193 the state road fund for any purpose for which other moneys in
194 the fund may lawfully be used, and in lieu of further payments
195 to the state road fund, the licensee of a racetrack which is
196 located in the municipality shall thereafter pay three tenths of
197 one percent of the pari-mutuel pools into the general fund of the
198 municipality. If no incorporation occurs before the first day of
199 July, one thousand nine hundred eighty-nine, then payments to
200 the state road fund shall thereafter continue as provided for
201 under the provisions of this subdivision.

202 A dog racing licensee, before deducting the commissions
203 authorized by this subdivision, shall give written notification to
204 the racing commission not less than thirty days prior to any
205 change in the percentage rates for the commissions. The racing
206 commission shall prescribe blank forms for filing the notifica-
207 tion. The notification shall disclose the following: (A) The
208 revised commissions to be deducted from the pari-mutuel pools
209 each day on win, place and show betting and on different forms
210 of multiple bettings; (B) the dates to be included in the revised
211 betting; (C) such other information as may be required by the
212 racing commission.

213 The licensee shall establish a special fund to be used only
214 for capital improvements or long-term debt amortization or
215 both: *Provided*, That any licensee, heretofore licensed for a
216 period of eight years prior to the effective date of the amend-
217 ment made to this section during the regular session of the
218 Legislature held in the year one thousand nine hundred eighty-
219 seven, shall establish the special fund to be used only for capital
220 improvements or physical plant maintenance, or both, at the
221 licensee's licensed facility or at the licensee's commonly
222 owned racing facility located within this state. Deposits made
223 into the funds shall be in an amount equal to twenty-five
224 percent of the increased rate total over and above the applicable
225 rate in effect as of the first day of January, one thousand nine
226 hundred eighty-seven, of the pari-mutuel pools for the day. Any
227 amount deposited into the funds must be expended or liability
228 therefor incurred within a period of two years from the date of
229 deposit. Any funds not expended shall be transferred immedi-
230 ately into the state general fund after expiration of the two-year
231 period.

232 The licensee shall make a deposit into a special fund
233 established by the licensee and used for payment of regular
234 purses offered for dog racing, which deposits out of the

235 licensee's commissions for each day shall be three and seventy-
236 five one-hundredths percent of the pari-mutuel pools.

237 The licensee shall further establish a special fund to be used
238 exclusively for marketing and promotion programs; the funds
239 shall be in an amount equal to five percent over and above the
240 applicable rates in effect as of the first day of January, one
241 thousand nine hundred eighty-seven of the total pari-mutuel
242 pools for the day.

243 The racing commission shall prepare and transmit annually
244 to the governor and the Legislature a report of the activities of
245 the racing commission under this subdivision. The report shall
246 include a statement of: The amount of commissions retained by
247 licensees; the amount of taxes paid to the state; the amounts
248 paid to municipalities, counties and the division of highways
249 dog racing fund; the amounts deposited by licensees into
250 special funds for capital improvements or long-term debt
251 amortization and a certified statement of the financial condition
252 of any licensee depositing into the fund; the amounts paid by
253 licensees into special funds and used for regular purses offered
254 for dog racing; the amounts paid by licensees into special funds
255 and used for marketing and promotion programs; and such
256 other information as the racing commission may consider
257 appropriate for review.

258 (c) In addition to any commission, a licensee of horse race
259 or dog race meetings shall also be entitled to retain the legiti-
260 mate breakage, which shall be made and calculated to the dime,
261 and from the breakage, the licensee of a horse race meeting
262 (excluding dog race meetings), shall deposit daily fifty percent
263 of the total of the breakage retained by the licensee into the
264 special fund created pursuant to the provisions of subdivision
265 (1), subsection (b) of this section for the payment of regular
266 purses.

267 (d) The director of audit, and any other auditors employed
268 by the racing commission who are also certified public account-
269 ants or experienced public accountants, shall have free access
270 to the space or enclosure where the pari-mutuel system of
271 wagering is conducted or calculated at any horse or dog race
272 meeting for the purpose of ascertaining whether or not the
273 licensee is deducting and retaining only a commission as
274 provided in this section and is otherwise complying with the
275 provisions of this section. They shall also, for the same pur-
276 poses only, have full and free access to all records and papers
277 pertaining to the pari-mutuel system of wagering and shall
278 report to the racing commission in writing, under oath, whether
279 or not the licensee has deducted and retained any commission
280 in excess of that permitted under the provisions of this section
281 or has otherwise failed to comply with the provisions of this
282 section.

283 (e) No licensee shall permit or allow any individual under
284 the age of eighteen years to wager at any horse or dog racetrack,
285 knowing or having reason to believe that the individual is under
286 the age of eighteen years.

287 (f) Notwithstanding the foregoing provisions of subdivision
288 (1), subsection (b) of this section, to the contrary, a thorough-
289 bred licensee qualifying for and paying the alternate reduced
290 tax on pari-mutuel pools provided in section ten of this article
291 shall distribute the commission authorized to be deducted by
292 subdivision (1), subsection (b) of this section as follows: (i) The
293 licensee shall pay the alternate reduced tax provided in section
294 ten of this article; (ii) the licensee shall pay one tenth of one
295 percent of the pari-mutuel pools into the general fund of the
296 county commission of the county in which the racetrack is
297 located, except if within a municipality, then to the municipal
298 general fund; (iii) the licensee shall pay one half of the remain-
299 der of the commission into the special fund established by the
300 licensee and to be used for the payment of regular purses

301 offered for thoroughbred racing by the licensee; and (iv) the
302 licensee shall retain the amount remaining after making the
303 payments required in this subsection.

304 (g) Each kennel which provides or races dogs owned or
305 leased by others shall furnish to the commission a surety bond
306 in an amount to be determined by the commission to secure the
307 payment to the owners or lessees of the dogs the portion of any
308 purse owed to the owner or lessee.

**§19-23-13. Disposition of funds for payment of outstanding and
unredeemed pari-mutuel tickets; publication of
notice; irredeemable tickets; stake races for dog
tracks.**

1 (a) All moneys held by any licensee for the payment of
2 outstanding and unredeemed pari-mutuel tickets, if not claimed
3 within ninety days after the close of a horse or dog race meeting
4 or the televised racing day, as the case may be, in connection
5 with which the tickets were issued, shall be turned over by the
6 licensee to the racing commission within fifteen days after the
7 expiration of the ninety-day period, and the licensee shall give
8 any information required by the racing commission concerning
9 the outstanding and unredeemed tickets. The moneys shall be
10 deposited by the racing commission in a banking institution of
11 its choice in a special account to be known as "West Virginia
12 Racing Commission Special Account - Unredeemed Pari-
13 Mutuel Tickets." Notice of the amount, date and place of each
14 deposit shall be given by the racing commission, in writing, to
15 the state treasurer. The racing commission shall then cause to
16 be published a notice to the holders of the outstanding and
17 unredeemed pari-mutuel tickets, notifying them to present their
18 unredeemed tickets for payment at the principal office of the
19 racing commission within ninety days from the date of the
20 publication of the notice. The notice shall be published within
21 fifteen days following the receipt of the outstanding and

22 unredeemed pari-mutuel ticket moneys by the commission from
23 the licensee as a Class I legal advertisement in compliance with
24 the provisions of article three, chapter fifty-nine of this code,
25 and the publication area for the publication shall be the county
26 in which the horse or dog race meeting was held and the county
27 in which the televised racing day wagering was conducted in
28 this state.

29 (b) Any outstanding and unredeemed pari-mutuel tickets
30 that are not presented for payment within ninety days from the
31 date of the publication of the notice are thereafter irredeemable,
32 and the moneys theretofore held for the redemption of the pari-
33 mutuel tickets shall become the property of the racing commis-
34 sion and shall be expended as provided in this subsection. The
35 racing commission shall maintain separate accounts for each
36 licensee and shall record in each separate account the moneys
37 turned over by the licensee and the amount expended at the
38 licensee's track for the purposes set forth in this subsection. The
39 moneys in the West Virginia racing commission special account
40 - unredeemed pari-mutuel tickets shall be expended as follows:

41 (1) To the owner of the winning horse in any horse race at
42 a horse race meeting held or conducted by any licensee:
43 *Provided*, That the owner of the horse is at the time of the horse
44 race a bona fide resident of this state, a sum equal to ten percent
45 of the purse won by the horse at that race. The commission may
46 require proof that the owner was, at the time of the race, a bona
47 fide resident of this state. Upon proof by the owner that he or
48 she filed a personal income tax return in this state for the
49 previous two years and that he or she owned real or personal
50 property in this state and paid taxes in this state on real or
51 personal property for the previous two years, he or she shall be
52 presumed to be a bona fide resident of this state; and

53 (2) To the breeder (that is, the owner of the mare) of the
54 winning horse in any horse race at a horse race meeting held or

55 conducted by any licensee: *Provided*, That the mare foaled in
56 this state, a sum equal to ten percent of the purse won by the
57 horse; and

58 (3) To the owner of the stallion which sired the winning
59 horse in any horse race at a horse race meeting held or con-
60 ducted by any licensee: *Provided*, That the mare which foaled
61 the winning horse was served by a stallion standing and
62 registered in this state, a sum equal to ten percent of the purse
63 won by the horse; and

64 (4) To those horse racing licensees not participating in the
65 thoroughbred development fund authorized in section thirteen-b
66 of this article, the unexpended balance of the licensee's account
67 not expended as provided in subdivisions (1), (2) and (3) of this
68 subsection: *Provided*, That all moneys distributed under this
69 subdivision shall be expended solely for capital improvements
70 at the licensee's track: *Provided, however*, That the capital
71 improvements must be approved, in writing, by the West
72 Virginia racing commission before funds are expended by the
73 licensee for that capital improvement; and

74 (5) When the moneys in the special account, known as the
75 West Virginia racing commission special account - unredeemed
76 pari-mutuel tickets will more than satisfy the requirements of
77 subdivisions (1), (2), (3) and (4) of this subsection, the West
78 Virginia racing commission shall have the authority to expend
79 the excess moneys from unredeemed horse racing pari-mutuel
80 tickets as purse money in any race conditioned exclusively for
81 West Virginia bred or sired horses, and to expend the excess
82 moneys from unredeemed dog racing pari-mutuel tickets in
83 supplementing purses and establishing stake races and dog
84 racing handicaps at the dog tracks: *Provided*, That subject to the
85 availability of funds, the commission shall, after the require-
86 ments of subdivisions (1), (2), (3) and (4) of this subsection
87 have been satisfied:

88 (A) Transfer annually two hundred thousand dollars to the
89 West Virginia racing commission special account - West
90 Virginia greyhound breeding development fund;

91 (B) Transfer annually two hundred thousand dollars into a
92 separate account to be used for stakes races for West Virginia
93 bred greyhounds at dog racetracks; and

94 (C) Transfer annually two hundred thousand dollars to a
95 trust maintained and administered by the organization which is
96 recognized by the West Virginia racing commission, pursuant
97 to a legislative rule proposed for promulgation by the commis-
98 sion and authorized by the Legislature, as the representative of
99 the majority of the active jockeys in West Virginia, for the
100 purpose of providing health and disability benefits to eligible
101 active or disabled West Virginia jockeys and their dependents
102 in accordance with eligibility criteria established by said
103 organization. For purposes of this section in determining health
104 benefits, an eligible active jockey is one who rides at least one
105 hundred mounts per calendar year of which fifty-one must be in
106 the state of West Virginia: *Provided*, That a jockey is not
107 eligible for health benefits if he or she receives health benefits
108 from any other state; and

109 (D) After all payments to satisfy the requirements of (A),
110 (B) and (C) of this proviso have been satisfied, the commission
111 shall have authority to transfer one hundred fifty thousand
112 dollars left from all uncashed pari-mutuel tickets to the trust
113 maintained and administered by the organization which is
114 recognized by the West Virginia racing commission, pursuant
115 to legislative rule proposed for promulgation by the commis-
116 sion and authorized by the Legislature as the representative of
117 the majority of the active jockeys in West Virginia.

118 (c) The commission shall submit to the legislative auditor
119 a quarterly report and accounting of the income, expenditures

120 and unobligated balance in the special account created by this
121 section known as the West Virginia racing commission special
122 account -unredeemed pari-mutuel tickets.

123 (d) Nothing contained in this article shall prohibit one
124 person from qualifying for all or more than one of the aforesaid
125 awards or for awards under section thirteen-b of this article.

126 (e) The cost of publication of the notice provided for in this
127 section shall be paid from the funds in the hands of the state
128 treasurer collected from the pari-mutuel pools' tax provided for
129 in section ten of this article, when not otherwise provided in the
130 budget; but no such costs shall be paid unless an itemized
131 account thereof, under oath, be first filed with the state auditor.



CHAPTER 8

(S. B. 1003 — By Senators Plymale and Tomblin, Mr. President)

[Passed April 23, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the public employees insurance agency; and providing for an allocation of aggregate premium percentages between employers and employees in the financial plans of the agency.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.**§5-16-5. Purpose, powers and duties of the finance board; initial financial plan; financial plan for following year; and annual financial plans.**

1 (a) The purpose of the finance board created by this article
2 is to bring fiscal stability to the public employees insurance
3 agency through development of annual financial plans and
4 long-range plans designed to meet the agency's estimated total
5 financial requirements, taking into account all revenues
6 projected to be made available to the agency, and apportioning
7 necessary costs equitably among participating employers,
8 employees and retired employees and providers of health care
9 services.

10 (b) The finance board shall retain the services of an
11 impartial, professional actuary, with demonstrated experience
12 in analysis of large group health insurance plans, to estimate the
13 total financial requirements of the public employees insurance
14 agency for each fiscal year and to review and render written
15 professional opinions as to financial plans proposed by the
16 finance board. The actuary shall also assist in the development
17 of alternative financing options and perform any other services
18 requested by the finance board or the director. All reasonable
19 fees and expenses for actuarial services shall be paid by the
20 public employees insurance agency. Any financial plan or
21 modifications to a financial plan approved or proposed by the
22 finance board pursuant to this section shall be submitted to and
23 reviewed by the actuary and may not be finally approved and
24 submitted to the governor and to the Legislature without the
25 actuary's written professional opinion that the plan may be
26 reasonably expected to generate sufficient revenues to meet all
27 estimated program and administrative costs of the agency,
28 including incurred but unreported claims, for the fiscal year for
29 which the plan is proposed. The actuary's opinion on the
30 financial plan for each fiscal year shall allow for no more than

31 thirty days of accounts payable to be carried over into the next
32 fiscal year. The actuary's opinion for any fiscal year shall not
33 include a requirement for establishment of a reserve fund.

34 (c) All financial plans required by this section shall
35 establish:

36 (1) Maximum levels of reimbursement which the public
37 employees insurance agency makes to categories of health care
38 providers;

39 (2) Any necessary cost containment measures for imple-
40 mentation by the director;

41 (3) The levels of premium costs to participating employers;
42 and

43 (4) The types and levels of cost to participating employees
44 and retired employees.

45 The financial plans may provide for different levels of costs
46 based on the insureds' ability to pay. The finance board may
47 establish different levels of costs to retired employees based
48 upon length of employment with a participating employer,
49 ability to pay or other relevant factors. The financial plans may
50 also include optional alternative benefit plans with alternative
51 types and levels of cost. The finance board may develop
52 policies which encourage the use of West Virginia health care
53 providers.

54 In addition, the finance board may allocate a portion of the
55 premium costs charged to participating employers to subsidize
56 the cost of coverage for participating retired employees, on such
57 terms as the finance board determines are equitable and
58 financially responsible.

59 (d)(1) The finance board shall prepare an annual financial
60 plan for each fiscal year during which the finance board
61 remains in existence. The finance board chairman shall request
62 the actuary to estimate the total financial requirements of the
63 public employees insurance agency for the fiscal year.

64 (2) The finance board shall prepare a proposed financial
65 plan designed to generate revenues sufficient to meet all
66 estimated program and administrative costs of the public
67 employees insurance agency for the fiscal year. The proposed
68 financial plan shall allow for no more than thirty days of
69 accounts payable to be carried over into the next fiscal year.
70 Before final adoption of the proposed financial plan, the finance
71 board shall request the actuary to review the plan and to render
72 a written professional opinion stating whether the plan will
73 generate sufficient revenues to meet all estimated program and
74 administrative costs of the public employees insurance agency
75 for the fiscal year. The actuary's report shall explain the basis
76 of its opinion. If the actuary concludes that the proposed
77 financial plan will not generate sufficient revenues to meet all
78 anticipated costs, then the finance board shall make necessary
79 modifications to the proposed plan to ensure that all actuarially
80 determined financial requirements of the agency will be met.

81 (3) Upon obtaining the actuary's opinion, the finance board
82 shall conduct one or more public hearings in each congressional
83 district to receive public comment on the proposed financial
84 plan, shall review such comments and shall finalize and
85 approve the financial plan.

86 (4) Any financial plan shall be designed to allow thirty days
87 or less of accounts payable to be carried over into the next fiscal
88 year. For each fiscal year, the governor shall provide his or her
89 estimate of total revenues to the finance board no later than the
90 fifteenth day of October of the preceding fiscal year: *Provided,*
91 That, for the prospective financial plans required by this

92 section, the governor shall estimate the revenues available for
93 each fiscal year of the plans based on the estimated percentage
94 of growth in general fund revenues. The finance board shall
95 submit its final, approved financial plan, after obtaining the
96 necessary actuary's opinion and conducting one or more public
97 hearings in each congressional district, to the governor and to
98 the Legislature no later than the first day of January preceding
99 the fiscal year. The financial plan for a fiscal year becomes
100 effective and shall be implemented by the director on the first
101 day of July of the fiscal year. In addition to each final, approved
102 financial plan required under this section, the finance board
103 shall also simultaneously submit financial statements based on
104 generally accepted accounting practices (GAAP) and the final,
105 approved plan restated on an accrual basis of accounting, which
106 shall include allowances for incurred but not reported claims:
107 *Provided, however,* That the financial statements and the
108 accrual-based financial plan restatement shall not affect the
109 approved financial plan.

110 (e) The provisions of chapter twenty-nine-a of this code
111 shall not apply to the preparation, approval and implementation
112 of the financial plans required by this section.

113 (f) Beginning on the first day of January, two thousand, and
114 every year thereafter, the finance board shall submit to the
115 governor and the Legislature a prospective financial plan, for a
116 period not to exceed five years, for the programs provided for
117 in this article. Factors that the board shall consider include, but
118 shall not be limited to, the trends for the program and the
119 industry; the medical rate of inflation; utilization patterns; cost
120 of services; and specific information such as average age of
121 employee population, active to retiree ratios, the service
122 delivery system and health status of the population.

123 (g) The prospective financial plans shall be based on the
124 estimated revenues submitted in accordance with subdivision

125 (4), subsection (d) of this section and shall include an average
126 of the projected cost-sharing percentages of premiums and an
127 average of the projected deductibles and copays for the various
128 programs. Beginning in the plan year which commences on the
129 first day of July, two thousand two, and in each plan year
130 thereafter, until and including the plan year which commences
131 on the first day of July, two thousand six, the prospective plans
132 shall include incremental adjustments toward the ultimate level
133 required in this subsection, in the aggregate cost-sharing
134 percentages of premium between employers and employees.
135 Effective in the plan year commencing on the first day of July,
136 two thousand six, and in each plan year thereafter, the aggregate
137 premium cost-sharing percentages between employers and
138 employees shall be at a level of eighty percent for the employer
139 and twenty percent for employees, except for the employers
140 provided for in subsection (d), section eighteen of this article
141 whose premium cost-sharing percentages shall be governed by
142 that subsection. After the submission of the initial prospective
143 plan, the board may not increase costs to the participating
144 employers or change the average of the premiums, deductibles
145 and copays for employees, except in the event of a true emer-
146 gency as provided for in this section: *Provided*, That if the
147 board invokes the emergency provisions, the cost shall be borne
148 between the employers and employees in proportion to the cost-
149 sharing ratio for that plan year: *Provided, however*, That for
150 purposes of this section, "emergency" means that the most
151 recent projections demonstrate that plan expenses will exceed
152 plan revenues by more than one percent in any plan year.

153 (h) The finance board shall meet on at least a quarterly
154 basis to review implementation of its current financial plan in
155 light of the actual experience of the public employees insurance
156 agency. The board shall review actual costs incurred, any
157 revised cost estimates provided by the actuary, expenditures
158 and any other factors affecting the fiscal stability of the plan
159 and may make any additional modifications to the plan neces-

160 sary to ensure that the total financial requirements of the agency
161 for the current fiscal year are met. The financial board may not
162 increase the types and levels of cost to employees during its
163 quarterly review except in the event of a true emergency.

164 (i) For any fiscal year in which legislative appropriations
165 differ from the governor's estimate of general and special
166 revenues available to the agency, the finance board shall, within
167 thirty days after passage of the budget bill, make any modifica-
168 tions to the plan necessary to ensure that the total financial
169 requirements of the agency for the current fiscal year are met.

CHAPTER 9

(S. B. 1002 — By Senators Tomblin, Mr. President, Craigo, Piymale, Jackson, Prezioso, Unger, Snyder, McCabe, Anderson, Helmick, Wooton, Chafin, Bailey, Fanning, Edgell, Kessler, Minard, Sharpe, Ross, Mitchell, Hunter, Rowe, Love, Caldwell, Oliverio, McKenzie, Redd, Burnette, Boley, Deem, Minear and Facemyer)

[Passed April 23, 2001; in effect from passage. 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 twenty-six-s, relating to the teachers retirement system; providing a one-time supplement to the retirement benefit of certain annuitants; and specifying eligibility criteria therefor.

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 twenty-six-s, to read as follows:

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.**§18-7A-26s. One-time supplement for certain annuitants effective July 1, 2001.**

1 (a) A one-time supplement to retirement benefits shall be
2 provided to retirees of this system who have: (i) Reached the
3 specified age threshold; and (ii) have been in retirement status
4 for the specified number of years, as follows:

5 (1) For retirees who, as of the first day of July, two thou-
6 sand one, are at least sixty-five years of age and who have been
7 an annuitant for at least five consecutive years, this one-time
8 supplement shall equal five percent of his or her annuity benefit
9 as of the effective date of this section;

10 (2) For retirees who, as of the first day of July, two thou-
11 sand one, are at least seventy years of age and who have been
12 an annuitant for at least five consecutive years, this one-time
13 supplement shall equal ten percent of his or her annuity benefit
14 as of the effective date of this section; and

15 (3) For any person who, as of the first day of July, two
16 thousand one, is at least sixty-five years of age and who retired
17 under the early retirement incentive provided in section thirty-
18 five-b of this article, this one-time supplement shall equal three
19 percent of his or her annuity benefit as of the effective date of
20 this section and subdivisions (1) and (2) of this subsection do
21 not apply.

22 (b) The one-time supplement provided for in this section
23 applies only to members who have retired prior to or as of the
24 effective date of this section or, if applicable, to beneficiaries
25 receiving benefits under the retirement system prior to or as of
26 the effective date of this section: *Provided*, That the supplement
27 provided herein is subject to any applicable limitations thereon
28 under Section 415 of the Internal Revenue Code of 1986, as
29 amended.

CHAPTER 10

(S. B. 1004 — By Senator Craig)

[Passed April 23, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter twenty-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 ten, all relating to continuing the public service commission.

Be it enacted by the Legislature of West Virginia:

That Section three, article one, chapter twenty-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 ten, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS.

§24-1-3. Commission continued; membership; chairman; compensation.

§24-1-10. Termination of commission.

§24-1-3. Commission continued; membership; chairman; compensation.

1 (a) The public service commission of West Virginia is
2 continued and directed as provided by this chapter, chapter
3 twenty-four-a, chapter twenty-four-b and chapter twenty-four-d
4 of this code. After having conducted a performance audit
5 through its joint committee on government operations, pursuant
6 to section nine, article ten, chapter four of this code, the

7 Legislature hereby finds and declares that the public service
8 commission should be continued and reestablished. Accord-
9 ingly, notwithstanding the provisions of section five, article ten,
10 chapter four of this code, the public service commission shall
11 continue to exist until the first day of July, two thousand three.
12 The public service commission may sue and be sued by that
13 name. The public service commission shall consist of three
14 members who shall be appointed by the governor, with the
15 advice and consent of the Senate. The commissioners shall be
16 citizens and residents of this state and at least one of them shall
17 be duly licensed to practice law in West Virginia, with not less
18 than ten years' actual work experience in the legal profession
19 as a member of a state bar. No more than two of the commis-
20 sioners shall be members of the same political party. Each
21 commissioner shall, before entering upon the duties of his or
22 her office, take and subscribe to the oath provided by section
23 five, article IV of the constitution of this state. The oath shall be
24 filed in the office of the secretary of state. The governor shall
25 designate one of the commissioners to serve as chairman at the
26 governor's will and pleasure. The chairman shall be the chief
27 administrative officer of the commission. The governor may
28 remove any commissioner only for incompetency, neglect of
29 duty, gross immorality, malfeasance in office or violation of
30 subsection (c) of this section.

31 (b) The unexpired terms of members of the public service
32 commission at the time this subsection becomes effective are
33 continued. Upon expiration of the terms, appointments are for
34 terms of six years, except that an appointment to fill a vacancy
35 is for the unexpired term only. The commissioners whose terms
36 are terminated by the provisions of this subsection are eligible
37 for reappointment.

38 (c) No person while in the employ of, or holding any
39 official relation to, any public utility subject to the provisions
40 of this chapter or holding any stocks or bonds of a public utility

41 subject to the provisions of this chapter or who is pecuniarily
42 interested in a public utility subject to the provisions of this
43 chapter may serve as a member of the commission or as an
44 employee of the commission. Nor may any commissioner be a
45 candidate for or hold public office or be a member of any
46 political committee while acting as a commissioner; nor may
47 any commissioner or employee of the commission receive any
48 pass, free transportation or other thing of value, either directly
49 or indirectly, from any public utility or motor carrier subject to
50 the provisions of this chapter. In case any of the commissioners
51 becomes a candidate for any public office or a member of any
52 political committee, the governor shall remove him or her from
53 office and shall appoint a new commissioner to fill the vacancy
54 created.

55 (d) The salaries of members of the public service commis-
56 sion and the manner in which they are paid established by the
57 prior enactment of this section are continued. Effective the first
58 day of July, two thousand one the annual salary of each
59 commissioner provided in section two-a, article seven, chapter
60 six of this code shall be paid in monthly installments from the
61 special funds in the percentages that follow:

62 (1) From the public service commission fund collected
63 under the provisions of section six, article three of this chapter,
64 eighty percent;

65 (2) From the public service commission motor carrier fund
66 collected under the provisions of section six, article six, chapter
67 twenty-four-a of this code, seventeen percent; and

68 (3) From the public service commission gas pipeline safety
69 fund collected under the provisions of section three, article five,
70 chapter twenty-four-b of this code, three percent.

71 In addition to the salary provided for all commissioners in
72 section two-a, article seven, chapter six of this code, the

73 chairman of the commission shall receive five thousand dollars
 74 per annum to be paid in monthly installments from the public
 75 service commission fund collected under the provisions of
 76 section six, article three of this chapter.

§24-1-10. Termination of commission.

1 The public service commission shall terminate on the first
 2 day of July, two thousand three, pursuant to the provisions of
 3 article ten, chapter four of this code unless sooner terminated,
 4 continued or reestablished pursuant to the provisions of that
 5 article.

CHAPTER 11

(S. B. 1001 — By Senators Tomblin, Mr. President, and Sprouse,
 Br Request of the Executive)

[Passed April 19, 2001; in effect from passage. Approved by the Governor.]

AN ACT to repeal section sixteen, article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three of said article, relating to extending the termination date of the extra five cents a gallon gas tax; requiring annual report to the Legislature; and providing for confidentiality.

Be it enacted by the Legislature of West Virginia:

That section sixteen, article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that section three of said article be amended and reenacted to read as follows:

ARTICLE 14. GASOLINE AND SPECIAL FUEL EXCISE TAX.

§11-14-3. Imposition of tax.

1 There is hereby levied an excise tax of fifteen and one-half
2 cents per gallon on all gasoline or special fuel, which tax shall
3 be computed in accordance with the appropriate measure of tax
4 as hereinafter prescribed in this article: *Provided*, That begin-
5 ning the first day of May, one thousand nine hundred ninety-
6 three, the tax levied by this article shall be twenty and one-half
7 cents per gallon: *Provided, however*, That on and after the first
8 day of August, two thousand seven, the tax levied by this
9 article shall be fifteen and one-half cents per gallon.

10 Beginning on the fifteenth day of January, two thousand
11 three, and every fifteenth day of January thereafter, the tax
12 commissioner shall submit to the Legislature an annual report
13 identifying the amount of revenue collected from the imposi-
14 tion of the tax imposed by this section in each county of this
15 state via sales at each individual retail gas pump during the
16 preceding fiscal year. Notwithstanding any provision of this
17 code to the contrary, all information individually made
18 available to the tax commissioner by a taxpayer that is utilized
19 in the preparation of the report to the Legislature required by
20 this section is confidential and may not be disclosed to any
21 person in any manner inconsistent with any law of this state
22 protecting the confidentiality of taxpayer returns filed pursuant
23 to this article.

CHAPTER 12

**(S. B. 1005 — By Senators Tomblin, Mr. President, and Sprouse,
Br Request of the Executive)**

[Passed April 23, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article one-b; to amend article two-d of said chapter by adding thereto a new section, designated section four-b; to amend and reenact sections three and seven, article twenty-nine-a of said chapter; and to amend and reenact section nine-a, article twenty-two, chapter twenty-nine of said code, all relating generally to use of lottery proceeds; providing for the sale of revenue bonds by the hospital finance authority to fund one or more skilled nursing facilities that are constructed, equipped, staffed and operated by the director of the division of veterans' affairs to house and serve veterans of the United States armed forces who are citizens of the state; exempting the facilities from the certificate of need provisions; and redefining terms.

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 one-b; that article two-d of said chapter be amended by adding thereto a new section, designated section four-b; that sections three and seven, article twenty-nine-a of said chapter be amended and reenacted; and that section nine-a, article twenty-two, chapter twenty-nine of said code be amended and reenacted, all to read as follows:

Chapter

16. Public Health.

29. Miscellaneous Boards and Offices.

CHAPTER 16. PUBLIC HEALTH.

Article

1B. Skilled Nursing Facilities for Veterans of the United States Armed Forces.

2D. Certificate of Need.

29A. West Virginia Hospital Finance Authority Act.

ARTICLE 1B. SKILLED NURSING FACILITIES FOR VETERANS OF THE UNITED STATES ARMED FORCES.

§16-1B-1. Legislative findings.

§16-1B-2. Construction, staffing and operation of one or more skilled nursing facilities for veterans of the armed forces of the United States.

§16-1B-3. Issuance of bonds by the hospital finance authority; payment of bonds from net profits of the veterans lottery instant scratch-off game.

§16-1B-4. Eligibility for service; legislative rule.

§16-1B-1. Legislative findings.

1 The Legislature finds that the health and welfare of the
2 veterans of the armed forces who are citizens of our state will
3 be best served by the establishment of one or more skilled
4 nursing facilities exclusively for these veterans. Furthermore,
5 the Legislature finds that nearly two hundred thousand veterans
6 in this state have distinguished themselves with the highest
7 level of participation per capita of any state in the wars fought
8 by this nation. Further, an aging veterans' population which
9 suffers from wartime disabilities and illnesses are, or will be, in
10 need of skilled nursing care.

§16-1B-2. Construction, staffing and operation of one or more skilled nursing facilities for veterans of the armed forces of the United States.

1 The director of veterans affairs shall establish, construct,
2 equip and operate one or more skilled nursing facilities to serve
3 the needs of citizens of this state who are veterans of the armed
4 forces of the United States. For each nursing facility estab-
5 lished, the director shall appoint a facility administrator and
6 other employees as are necessary to maintain the facility and
7 deliver quality care to residents of the facility.

§16-1B-3. Issuance of bonds by the hospital finance authority; payment of bonds from net profits of the veterans lottery instant scratch-off game.

1 The director shall request that revenue bonds, not exceeding
2 the principal amount of ten million dollars, be issued by the
3 West Virginia hospital finance authority under provisions of
4 section seven, article twenty-nine-a of this chapter. Net profit
5 from the veterans lottery instant scratch-off game as authorized
6 by section nine-a, article twenty-two, chapter twenty-nine of
7 this code and other revenues that the Legislature may from time
8 to time appropriate shall pay the principal and interest obliga-
9 tions of the bonds.

§16-1B-4. Eligibility for service; legislative rule.

1 In order to qualify for service and residency in a skilled
2 nursing facility established under this article, an applicant must
3 have continuously been a citizen of the state of West Virginia
4 for twelve consecutive months and must have performed active
5 duty in an active component of the armed forces or performed
6 active service in a reserve component of the armed forces for at
7 least twelve consecutive months. The director shall propose a
8 legislative rule further defining and limiting eligibility for
9 services and residency under this article.

ARTICLE 2D. CERTIFICATE OF NEED.

**§16-2D-4b. Certificate of need; exemption for veterans skilled
nursing facility construction, operation and
maintenance.**

1 Notwithstanding any provision of this article and any rule
2 issued by the state agency, a certificate of need is not required
3 for the construction, renovation, maintenance or operation of
4 one or more state veterans skilled nursing facilities established
5 pursuant to the provisions of article one-b of this chapter.

ARTICLE 29A. WEST VIRGINIA HOSPITAL FINANCE AUTHORITY ACT.

§16-29A-3. Definitions.

§16-29A-7. Bonds and notes.

§16-29A-3. Definitions.

1 As used in this article, unless the context clearly requires a
2 different meaning:

3 (1) "Authority" means the West Virginia hospital finance
4 authority created by section four of this article, the duties,
5 powers, responsibilities and functions of which are specified in
6 this article;

7 (2) "Board" means the West Virginia hospital finance board
8 created by section four of this article, which shall manage and
9 control the authority;

10 (3) "Bond" means a revenue bond issued by the authority
11 to effect the purposes of this article;

12 (4) "Construction" means and includes new construction,
13 reconstruction, enlargement, improvement and providing
14 furnishings or equipment;

15 (5) "Direct provider of health care" means a person or
16 organization whose primary current activity is the provision of
17 health care to individuals and includes a licensed or certified
18 physician, osteopath, dentist, nurse, podiatrist or physician's
19 assistant or an organization comprised of these health profes-
20 sionals or employing these health professionals;

21 (6) "Hospital" means a corporation, association, institution
22 or establishment for the care of those who require medical
23 treatment, which may be a public or private corporation or
24 association, or state-owned or operated establishment and
25 specifically includes nursing homes which are licensed under
26 chapter sixteen of this code or those facilities certified under the
27 Social Security Act as intermediate care facilities for the
28 mentally retarded;

29 (7) "Hospital facilities" means any real or personal property
30 suitable and intended for, or incidental or ancillary to, use by a
31 hospital and includes: Outpatient clinics; laboratories; laun-
32 dries; nurses', doctors' or interns' residences; administration
33 buildings; facilities for research directly involved with hospital

34 care; maintenance, storage or utility facilities; parking lots and
35 garages; and all necessary, useful or related equipment,
36 furnishings and appurtenances and all lands necessary or
37 convenient as a site for the foregoing and specifically includes
38 any capital improvements to any of the foregoing. "Hospital
39 facilities" specifically includes office facilities not less than
40 eighty percent of which are intended for lease to direct provid-
41 ers of health care and which are geographically or functionally
42 related to one or more other hospital facilities, if the authority
43 determines that the financing of the office facilities is necessary
44 to accomplish the purposes of this article;

45 (8) "Hospital loan" means a loan made by the authority to
46 a hospital and specifically includes financings by the authority
47 for hospital facilities pursuant to lease-purchase agreements,
48 installment sale or other similar agreements;

49 (9) "Note" means a short-term promise to pay a specified
50 amount of money, payable and secured as provided pursuant to
51 this article and issued by the authority to effect the purposes of
52 this article;

53 (10) "Project costs" means the total of the reasonable or
54 necessary costs incurred for carrying out the works and
55 undertakings for the acquisition or construction of hospital
56 facilities under this article. "Project costs" includes, but is not
57 limited to, all of the following costs: The costs of acquisition or
58 construction of the hospital facilities; studies and surveys;
59 plans, specifications, architectural and engineering services;
60 legal, organization, marketing or other special services;
61 financing, acquisition, demolition, construction, equipping and
62 site development of new and rehabilitated buildings; rehabilita-
63 tion, reconstruction, repair or remodeling of existing buildings;
64 interest and carrying charges during construction and before full
65 earnings are achieved and operating expenses before full
66 earnings are achieved or a period of one year following the
67 completion of construction, whichever occurs first; and a
68 reasonable reserve for payment of principal of and interest on
69 bonds or notes of the authority. "Project costs" shall also
70 include reimbursement of a hospital for the foregoing costs

71 expended by a hospital from its own funds or from money
72 borrowed by the hospital for such purposes before issuance and
73 delivery of bonds or notes by the authority for the purpose of
74 providing funds to pay the project costs. "Project costs" also
75 specifically includes the refinancing of any existing debt of a
76 hospital necessary in order to permit the hospital to borrow
77 from the authority and give adequate security for the hospital
78 loan. The determination of the authority with respect to the
79 necessity of refinancing and adequate security for a hospital
80 loan is conclusive;

81 (11) "Revenue" means any money or thing of value
82 collected by, or paid to, the authority as principal of or interest,
83 charges or other fees on hospital loans or any other collections
84 on hospital loans made by the authority to hospitals to finance,
85 in whole or in part, the acquisition or construction of any
86 hospital facilities or other money or property which is received
87 and may be expended for or pledged as revenues pursuant to
88 this article;

89 (12) "Veterans skilled nursing facility" means a skilled
90 nursing care facility constructed and operated to serve the needs
91 of veterans of the armed forces of the United States who are
92 citizens of this state.

§16-29A-7. Bonds and notes.

1 (a) The authority periodically may issue its negotiable
2 bonds and notes in a principal amount which, in the opinion of
3 the authority, shall be necessary to provide sufficient funds for
4 the making of hospital loans, including temporary loans during
5 the construction of hospital facilities, for the payment of
6 interest on bonds and notes of the authority during construction
7 of hospital facilities for which the hospital loan was made and
8 for a reasonable time thereafter and for the establishment of
9 reserves to secure those bonds and notes.

10 (b) The authority periodically may issue renewal notes, may
11 issue bonds to pay notes and, if it considers refunding expedi-
12 ent, to refund or to refund in advance bonds or notes issued by

13 the authority by the issuance of new bonds pursuant to the
14 requirements of section thirteen of this article.

15 (c) The authority may, upon concurrent resolution passed
16 by the Legislature, authorize the issuance of negotiable bonds
17 and notes in a principal amount which are necessary to provide
18 sufficient funds for the construction, reconstruction, renovation
19 and maintenance of one or more skilled nursing facilities that
20 will only serve the skilled nursing needs of West Virginia
21 veterans who have performed active duty in an active compo-
22 nent of the armed forces or performed active service in a
23 reserve component of the armed forces. These bonds issued by
24 the authority may not exceed ten million dollars. The revenues
25 pledged for the repayment of principal and interest of these
26 bonds shall include the net profit of the veterans instant lottery
27 scratch-off game authorized by section nine-a, article twenty-
28 two, chapter twenty-nine of this code.

29 (d) Except as may otherwise be expressly provided by the
30 authority, every issue of its notes or bonds shall be special
31 obligations of the authority, payable solely from the property,
32 revenues or other sources of or available to the authority
33 pledges therefor.

34 (e) The bonds and the notes shall be authorized by resolu-
35 tion of the authority, shall bear the date and shall mature at time
36 or times, in the case of any such note or any renewals thereof,
37 not exceeding seven years from the date of issue of the original
38 note and in the case of any bond not exceeding fifty years from
39 the date of issue, as the resolution may provide. The bonds and
40 notes shall bear interest at rate or rates, be in a denomination,
41 be in a form, either coupon or registered, carry registration
42 privileges, be payable in the medium of payment and at place
43 or places and be subject to the terms of redemption as the
44 authority may authorize. The bonds and notes of the authority
45 may be sold by the authority, at public or private sale, at or not
46 less than the price the authority determines. The bonds and
47 notes are executed by the chairman and vice chairman of the
48 board, both of whom may use facsimile signatures. The official
49 seal of the authority or a facsimile thereof shall be affixed to or

50 printed on each bond and note and attested, manually or by
51 facsimile signature, by the secretary-treasurer of the board, and
52 any coupons attached to any bond or note shall bear the
53 signature or facsimile signature of the chairman of the board. In
54 case any officer whose signature, or a facsimile of whose
55 signature, appears on any bonds, notes or coupons ceases to be
56 an officer before delivery of the bonds or notes, such signature
57 or facsimile is nevertheless sufficient for all purposes the same
58 as if he or she had remained in office until the delivery; and, in
59 case the seal of the authority has been changed after a facsimile
60 has been imprinted on the bonds or notes, the facsimile seal will
61 continue to be sufficient for all purposes.

62 (f) A resolution authorizing bonds or notes or an issue of
63 bonds or notes under this article may contain provisions, which
64 are a part of the contract with the holders of the bonds or notes,
65 as to any or all of the following:

66 (1) Pledging and creating a lien on all or any part of the fees
67 and charges made or received or to be received by the authority,
68 all or any part of the moneys received in payment of hospital
69 loans and interest on hospital loans and all or any part of other
70 moneys received or to be received, to secure the payment of the
71 bonds or notes or of any issue of bonds or notes, subject to
72 those agreements with bondholders or noteholders which then
73 exist;

74 (2) Pledging and creating a lien on all or any part of the
75 assets of the authority, including notes, deeds of trust and
76 obligations securing the assets, to secure the payment of the
77 bonds or notes or of any issue of bonds or notes, subject to
78 those agreements with bondholders or note holders which then
79 exist;

80 (3) Pledging and creating a lien on any loan, grant or
81 contribution to be received from the federal, state or local
82 government or other source;

83 (4) The use and disposition of the income from hospital
84 loans owned by the authority and payment of the principal of
85 and interest on hospital loans owned by the authority;

86 (5) The setting aside of reserves or sinking funds and the
87 regulation and disposition thereof;

88 (6) Limitations on the purpose to which the proceeds of sale
89 of bonds or notes may be applied and pledging the proceeds to
90 secure the payment of the bonds or notes or of any issue of the
91 bonds or notes;

92 (7) Limitations on the issuance of additional bonds or notes
93 and the terms upon which additional bonds or notes may be
94 issued and secured;

95 (8) The procedure by which the terms of a contract with the
96 bondholders or noteholders may be amended or abrogated, the
97 amount of bonds or notes the holders of which must consent
98 thereto and the manner in which the consent may be given; and

99 (9) Vesting in a trustee or trustees the property, rights,
100 powers, remedies and duties which the authority considers
101 necessary or convenient.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICES.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-9a. Veterans instant lottery scratch-off game.

1 (a) Beginning the first day of September, two thousand, the
2 commission shall establish an instant lottery scratch-off game
3 designated as the veterans benefit game, which is offered by the
4 lottery.

5 (b) Notwithstanding the provisions of section eighteen of
6 this article, and subject to the provisions of subsection (d) of
7 this section, all net profits received from the sale of veterans
8 benefit game lottery tickets, materials and games are deposited
9 with the state treasurer into the veterans lottery fund created

10 under this section, and the Legislature may make appropriations
11 from this fund for payment of principal and interest for revenue
12 bonds issued under provisions of section seven, article
13 twenty-nine-a, chapter sixteen of this code: *Provided*, That once
14 the payment of the principal and interest is paid in full for the
15 construction of the initial veterans skilled nursing facility, the
16 Legislature may appropriate from the fund created under this
17 section moneys for the construction, equipping and operation of
18 additional skilled nursing facilities for veterans of the armed
19 forces of the United States military: *Provided, however*, That
20 after the payment of the above-mentioned items, the Legislature
21 may appropriate any excess funds to the general revenue fund.

22 (c) Before appropriation of any of the net profits derived
23 from the veterans benefit game for the uses set forth in this
24 section, the Legislature shall first determine that the state has
25 met all debt obligations for which lottery profits have been
26 pledged for that fiscal year.

27 (d) There is hereby created in the state treasury a special
28 revenue fund designated and known as the veterans lottery fund
29 which shall consist of all revenues derived from the veterans
30 benefit game, any appropriations to the fund by the Legislature
31 and all interest earned from investment of the fund and any
32 gifts, grants or contributions received by the fund. Revenues
33 received by the veterans lottery fund shall be deposited in the
34 West Virginia consolidated investment pool with the West
35 Virginia investment management board, with the interest
36 income a proper credit to all these funds.

37 (e) The commission shall change the design or theme of the
38 veterans benefit game regularly so that the game remains
39 competitive with the other instant lottery scratch-off games
40 offered by the commission. The tickets for the instant lottery
41 game created in this section shall clearly state that the profits
42 derived from the game are being used to benefit veterans in this
43 state.

LEGISLATURE OF WEST VIRGINIA

ACTS

THIRD EXTRAORDINARY SESSION, 2001

CHAPTER 1

**(H. B. 301 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed June 10, 2001; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated surplus balance in the state fund, general revenue, to the governor's office - civil contingent fund, fund 0105, fiscal year 2001, organization 0100, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

WHEREAS, The governor submitted to the Legislature a statement of the state fund, general revenue, dated June 10, 2001, setting forth therein the cash balance as of July 1, 2000, and further included the estimate of revenues for the fiscal year 2001, less net appropriation balances forwarded and regular appropriations for the fiscal year 2001; and

WHEREAS, It appears from the governor’s statement 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 one; 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 one, to fund 0105, fiscal year 2001, organization 0100, be supplemented and amended by increasing the total appropriation by two million fifty-one thousand dollars in the line item as follows:

1 TITLE II — APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 EXECUTIVE

4 8—Governor’s Office—

5 Civil Contingent Fund

6 (WV Code Chapter 5)

7 Fund 0105 FY 2001 Org 0100

8			General
9		Act-	Revenue
10		ivity	Funds

11 1 Civil Contingent Fund —

12 1a Total — Surplus (R) 238 \$ 2,051,000

13 The purpose of this bill is to supplement this account in the
14 budget act for the fiscal year ending the thirtieth day of June,
15 two thousand one, by increasing the existing appropriation for
16 Civil Contingent Fund - Total by two million fifty-one thousand
17 dollars for expenditure during the fiscal year two thousand one.

CHAPTER 2

(H. B. 302 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed June 10, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, title two, chapter one, acts of the Legislature, first extraordinary session, two thousand one, relating to making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the constitution making appropriations from surplus accrued certain amounts within the general revenue fund.

Be it enacted by the Legislature of West Virginia:

That section nine, title two, chapter one, acts of the Legislature, first extraordinary session, two thousand one, be amended and reenacted to read as follows:

1 **Sec. 9. Appropriations from surplus accrued.** — The
2 following items are hereby appropriated from the state fund,
3 general revenue, and are to be available for expenditure during
4 the fiscal year 2002 out of surplus funds only, accrued from the
5 fiscal year ending the thirtieth day of June, two thousand one,
6 subject to the terms and conditions set forth in this section.

7 It is the intent and mandate of the Legislature that the
8 following appropriations be payable only from surplus accrued
9 as of the thirty-first day of July, two thousand one, from the
10 fiscal year ending the thirtieth day of June two thousand one.

11 In the event that surplus revenues available on the
12 thirty-first day of July, two thousand one, are not sufficient to

13 meet all the appropriations made pursuant to this section, then
 14 the appropriations shall be made to the extent that surplus funds
 15 are available as of the date mandated, and shall be allocated
 16 first to provide the necessary funds to meet the first appropria-
 17 tion of this section; next, to provide the funds necessary for the
 18 second appropriation of this section; and subsequently to
 19 provide the funds necessary for each appropriation in succes-
 20 sion before any funds are provided for the next subsequent
 21 appropriation.

22 *316—Department of Administration—*

23 *Office of the Secretary*

24 (WV Code Chapter 5F)

25 Fund 0186 FY 2002 Org 0201

26 1 Salary Shortfall - Surplus 497 \$ 864,000

27 The appropriation for Salary Shortfall - Surplus shall be
 28 allocated by the Secretary of Administration to those agencies
 29 within the general revenue fund whose appropriations for
 30 “Personal Services” and “Employee Benefits” or other approp-
 31 riate items of appropriation are insufficient to comply with the
 32 salary increase provision of HB 102 as determined by the state
 33 budget office.

34 *317—Governor’s Office—*

35 *Civil Contingent Fund*

36 (WV Code Chapter 5)

37 Fund 0105 FY 2002 Org 0100

38 1 Civil Contingent Fund - Total
 39 2 Surplus 238 \$ 3,835,000

40	Total TITLE II, Section 9—	
41	Surplus Accrued	<u>\$ 4,699,000</u>

42 The purpose of this supplementary appropriation bill is to
 43 amend and reenact section nine, title two, chapter one, acts of
 44 the Legislature, first extraordinary session, two thousand one,
 45 relating to making appropriations of public money out of the
 46 treasury in accordance with section fifty-one, article six of the
 47 constitution making appropriations from surplus accrued certain
 48 amounts within the general revenue fund.



CHAPTER 3

**(H. B. 303 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
 [By Request of the Executive]**



[Passed June 10, 2001; in effect from passage. Approved by the Governor.]



AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the higher education policy commission - funding priorities - control account, fund 0591, fiscal year 2002, organization 0477, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand two.

WHEREAS, The governor submitted to the Legislature a statement of the state fund, general revenue, dated June 10, 2001, setting forth therein the cash balance as of July 1, 2000, and further included the estimate of revenues for the fiscal year 2001, less net appropriation balances forwarded and regular appropriations for the fiscal year 2001; and further included the estimate of revenues for the fiscal year

2002, less net appropriation balances forwarded and regular appropriations for fiscal year 2002; and

WHEREAS, It appears from the governor’s statement there now remains an unappropriated balance which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand two; 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 two, to fund 0591, fiscal year 2002, organization 0477, be supplemented and amended to hereafter read as follows:

1 TITLE II — APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 HIGHER EDUCATION POLICY COMMISSION

4 94—Higher Education Policy Commission—

5 Funding Priorities

6 Control Account

7 (WV Code Chapter 18B)

8 Fund 0591 FY 2002 Org 0477

9					General
10				Act-	Revenue
11				ivity	Funds
12	1	Peer Equity and Sustained			
13	2	Quality Support	489	\$	9,200,000

14	3	Independently Accredited Community and		
15	4	Technical College Development . 491	2,000,000	
16	5	Research Challenge 502	<u>1,000,000</u>	
17	6	Total	\$	12,200,000

18 The West Virginia Legislature reaffirms its commitment to
 19 the spirit, intent, and goals of the Compact with Higher Educa-
 20 tion as outlined in Senate Bill 653, as passed during the 2000
 21 Regular Session. The Legislature recognizes the continued need
 22 to provide improved access to postsecondary education for all
 23 of West Virginia's citizens in order to diversify and expand the
 24 economy of the state, and increase the competitiveness of the
 25 workforce.

26 The above appropriation for research challenge shall only be
 27 expended to match corporate, foundation, or public participa-
 28 tion in research projects.

29 The above appropriation shall be allocated only to the
 30 State's post-secondary institutions with compacts approved by
 31 the Higher Education Policy Commission, as stated in §18B-
 32 1A-5.

33 The purpose of this supplementary appropriation bill is to
 34 supplement this account in the budget act for the fiscal year
 35 ending the thirtieth day of June, two thousand two, by increas-
 36 ing the existing item of appropriation for peer equity and
 37 sustained quality support by two million two hundred thousand
 38 dollars; by increasing the existing item of appropriation for
 39 independently accredited community and technical college
 40 development by one million dollars; and by adding one million
 41 dollars to a new item of appropriation for research challenge,
 42 for expenditure during the fiscal year two thousand two.

CHAPTER 4

**(H. B. 304 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed June 10, 2001; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the state fund, general revenue, to the department of military affairs and public safety - division of corrections - correctional units, fund 0450, fiscal year 2002, organization 0608, as originally appointed by chapter one, acts of the Legislature, first extraordinary session, two thousand one, known as the “Budget Bill”.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation from the state fund, general revenue, to the department of military affairs and public safety - division of corrections - correctional units, fund 0450, fiscal year 2002, organization 0608, be amended and reduced in the existing line items as follows:

- 1 **TITLE II—APPROPRIATIONS.**
- 2 **Section 1. Appropriations from general revenue.**
- 3 **DEPARTMENT OF MILITARY AFFAIRS**
- 4 **AND PUBLIC SAFETY**
- 5 *61—Division of Corrections—*
- 6 *Correctional Units*

3286 APPROPRIATIONS [Ch. 4

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

8 Fund 0450 FY 2002 Org 0608

9			General
10		Act-	Revenue
11		ivity	Funds

12	4	Payments to Counties and/		
13	5	or Regional Jails	229	\$ 3,631,500

14 And, that the items of the total appropriations from the state
15 fund, general revenue, to the department of military affairs and
16 public safety - division of corrections - correctional units, fund
17 0450, fiscal year 2002, organization 0608, be amended and
18 increased in the line item as follows:

19 TITLE II—APPROPRIATIONS.

20 Section 1. Appropriations from general revenue.

21 EXECUTIVE

22 61—Division of Corrections—

23 Correctional Units

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

25 Fund 0450 FY 2002 Org 0608

26				General
27			Act-	Revenue
28			ivity	Funds

29	3	Unclassified	099	\$ 276,000
30	20	Mt. Olive Correctional Facility . . .	888	1,421,000
31	21a	Bureau of Prisons -		
32	21b	Federal Prison Camp	505	1,934,500

33 The purpose of this supplementary appropriation bill is to
34 supplement, amend, reduce and increase items of existing
35 appropriations in the aforesaid account for the designated
36 spending unit. The item for Payments to Counties and/or
37 Regional Jails is reduced by three million six hundred thirty-
38 one thousand five hundred dollars. The item for unclassified is
39 increased by two hundred seventy-six thousand dollars. The
40 item for Mt. Olive Correctional Facility is increased by one
41 million four hundred twenty-one thousand dollars and one
42 million nine hundred thirty-four thousand five hundred dollars
43 is added to a new item of appropriation for Bureau of Prisons -
44 Federal Prison Camp for expenditure during the fiscal year two
45 thousand two with no new money being appropriated.

CHAPTER 5

(H. B. 305 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed June 10, 2001; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand two, to the department of agriculture - donated food fund, fund 1446, fiscal year 2002, organization 1400, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand two.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of agriculture - donated food fund, fund 1446, fiscal year 2002, organization 1400, available

for expenditure during the fiscal year ending the thirtieth day of June, two thousand two; therefore

Be it enacted by the Legislature of West Virginia:

That chapter one, acts of the Legislature, first extraordinary session, two thousand one, known as the "Budget Bill," be supplemented and amended by adding to title II, section three thereof, the following:

1 TITLE II — APPROPRIATIONS.

2 Section 3. Appropriations from other funds.

3 EXECUTIVE

4 111a—Department of Agriculture—

5 Donated Food Fund

6 (WV Code Chapter 19)

7 Fund 1446 FY 2002 Org 1400

8		Act-	Other
9		ivity	Funds

10	1	Unclassified - Total	096	\$	1,200,000
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11 The purpose of this supplementary appropriation bill is to
12 supplement this account in the budget act for the fiscal year
13 ending the thirtieth day of June, two thousand two, by providing
14 for a new item of appropriation to be established therein to
15 appropriate other funds in the amount of one million two
16 hundred thousand dollars for the Donated Food Fund for
17 expenditure during the fiscal year two thousand two.

CHAPTER 6

**(H. B. 306 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed June 10, 2001; 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 two, to the department of agriculture, fund 8736, fiscal year 2002, organization 1400, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand two.

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 two, 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 two, to fund 8736, fiscal year 2002, organization 1400, be supplemented and amended by increasing the total appropriation by one million eight hundred thousand dollars as follows:

- 1 **TITLE II — APPROPRIATIONS.**
- 2 **Sec. 6. Appropriations of federal funds.**

3 EXECUTIVE

4 259—*Department of Agriculture*

5 (WV Code Chapter 19)

6 Fund 8736 FY 2002 Org 1400

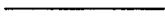
7	Act-	Federal
8	ivity	Funds
9	1 Unclassified - Total 096	\$ 1,800,000

10 The purpose of this supplementary appropriation bill is to
11 supplement this account in the budget act for the fiscal year
12 ending the thirtieth day of June, two thousand two, by increas-
13 ing the existing appropriation for unclassified - total by one
14 million eight hundred thousand dollars for expenditure during
15 fiscal year two thousand two.



CHAPTER 7

(S. B. 3002 — By Senators Tomblin, Mr. President, and Sprouse,
By Request of the Executive)



[Passed June 10, 2001; in effect from passage. Approved by the Governor.]



AN ACT to amend and reenact sections one, two and seven, article ten-d, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article one, chapter five-a of said code by adding thereto a new section, designated section ten, all relating to certain benefits attendant to employment with the state and county boards of education;

clarifying that assets of the public retirement systems administered by the consolidated public retirement board are held in trust; clarifying application of certain rules under the Internal Revenue Code to contributions and benefits under the qualified retirement plans administered by the consolidated public retirement board; authorizing the board to adopt policies and procedures and take other actions to comply with Internal Revenue Code requirements; providing for investment management consulting services for the teachers' defined contribution system; creating a public employee leave benefit analysis board; stating purpose, membership and duties of same; authorizing a study of the feasibility of instituting an employee leave benefit buy-back program; setting limit on expenditures for same; specifying mandatory factors to be considered and additional areas of study; authorizing department of administration and superintendent of state board of education to require certain data collection, etc., by spending units and county boards of education; requiring report to the Legislature by date certain; authorizing implementation of said board's recommendations by concurrent resolution; exempting certain rules from legislative rule-making review; making technical revisions; and deleting obsolete language and provisions.

Be it enacted by the Legislature of West Virginia:

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

**CHAPTER 5. GENERAL POWERS AND AUTHORITY
OF THE GOVERNOR, SECRETARY OF STATE AND
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS,
OFFICES, PROGRAMS, ETC.**

ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

- §5-10D-1. Consolidated public retirement board created; transition; members; vacancies; investment of plan funds.
- §5-10D-2. Chairman and vice chairman; executive director; employees; legal advisor; actuary.
- §5-10D-7. Compensation limitations; effective dates.

§5-10D-1. Consolidated public retirement board created; transition; members; vacancies; investment of plan funds.

1 (a) There is hereby continued a consolidated public
2 retirement board to administer all public retirement plans in this
3 state. It shall administer the public employees retirement
4 system established in article ten of this chapter; the teachers
5 retirement system established in article seven-a, chapter
6 eighteen of this code; the teachers' defined contribution
7 retirement system created by article seven-b of said chapter; the
8 West Virginia state police death, disability and retirement fund
9 created by article two, chapter fifteen of this code; the West
10 Virginia state police retirement system created by article two-a
11 of said chapter; the death, disability and retirement fund for
12 deputy sheriffs created by article fourteen-d, chapter seven of
13 this code; and the judges' retirement system created under
14 article nine, chapter fifty-one of this code.

15 (b) The consolidated public retirement board shall begin
16 administration of the death, disability and retirement fund for
17 deputy sheriffs established in article fourteen-d, chapter seven
18 of this code on the first day of July, one thousand nine hundred
19 ninety-eight.

20 (c) The membership of the consolidated public retirement
21 board consists of:

22 (1) The governor or his or her designee;

23 (2) The state treasurer or his or her designee;

24 (3) The state auditor or his or her designee;

25 (4) The secretary of the department of administration or his
26 or her designee;

27 (5) Four residents of the state, who are not members,
28 retirants or beneficiaries of any of the public retirement
29 systems, to be appointed by the governor, with the advice and
30 consent of the Senate; and

31 (6) A member, annuitant or retirant of the public employees
32 retirement system who is or was a state employee; a member,
33 annuitant or retirant of the public employees retirement system
34 who is not or was not a state employee; a member, annuitant or
35 retirant of the teachers retirement system; a member, annuitant
36 or retirant of the West Virginia state police death, disability and
37 retirement fund; a member, annuitant or retirant of the deputy
38 sheriff's death, disability and retirement fund; and a member,
39 annuitant or retirant of the teachers' defined contribution
40 retirement system, all to be appointed by the governor, with the
41 advice and consent of the Senate.

42 (d) The appointed members of the board shall serve
43 five-year terms. The governor shall appoint the member
44 representing the deputy sheriff's death, disability and retirement
45 fund by the first day of July, one thousand nine hundred
46 ninety-eight, to a five-year term. A member appointed pursuant
47 to subdivision (6), subsection (c) of this section ceases to be a
48 member of the board if he or she ceases to be a member of the
49 represented system. If a vacancy occurs in the appointed

50 membership, the governor, within sixty days, shall fill the
51 vacancy by appointment for the unexpired term. No more than
52 five appointees shall be of the same political party.

53 (e) The consolidated public retirement board has all the
54 powers, duties, responsibilities and liabilities of the public
55 employees retirement system established pursuant to article ten
56 of this chapter; the teachers retirement system established
57 pursuant to article seven-a, chapter eighteen of this code; the
58 teachers' defined contribution system established pursuant to
59 article seven-b of said chapter; the West Virginia state police
60 death, disability and retirement fund created pursuant to article
61 two, chapter fifteen of this code; the death, disability and
62 retirement fund for deputy sheriffs created pursuant to article
63 fourteen-d, chapter seven of this code; and the judges' retire-
64 ment system created pursuant to article nine, chapter fifty-one
65 of this code and their appropriate governing boards. The
66 consolidated public retirement board may propose for promul-
67 gation all rules necessary to effectuate its powers, duties and
68 responsibilities pursuant to article three, chapter twenty-nine-a
69 of this code: *Provided*, That the board may adopt any or all of
70 the rules, previously promulgated, of a retirement system which
71 it administers.

72 (f) Effective on the first day of July, one thousand nine
73 hundred ninety-six, the consolidated public retirement board
74 shall, within two business days of receipt, transfer all funds
75 received by the consolidated public retirement board for the
76 benefit of the retirement systems within the consolidated
77 pension plan as defined in section three-c, article six-b, chapter
78 forty-four of this code, including, but not limited to, all em-
79 ployer and employee contributions, to the West Virginia
80 investment management board: *Provided*, That the employer
81 and employee contributions of the teachers' defined contribu-
82 tion system, established in section three, article seven-b, chapter
83 eighteen of this code, and voluntary deferred compensation

84 funds invested by the West Virginia consolidated public
85 retirement board pursuant to section five, article ten-b of this
86 chapter may not be transferred to the West Virginia investment
87 management board.

88 (g) Notwithstanding any provision of this code or any
89 legislative rule to the contrary, all assets of the public retire-
90 ment plans set forth in subsection (a) of this section shall be
91 held in trust. The consolidated public retirement board shall be
92 a trustee for all public retirement plans, except with regard to
93 the investment of funds: *Provided*, That the consolidated public
94 retirement board shall be a trustee with regard to the invest-
95 ments of the teachers' defined contribution system, the volun-
96 tary deferred compensation funds invested pursuant to section
97 five, article ten-b of this chapter and any other assets of the
98 public retirement plans administered by the consolidated public
99 retirement board as set forth in subsection (a) of this section for
100 which no trustee has been expressly designated in this code.

101 (h) The board may employ the West Virginia investment
102 management board to provide investment management consult-
103 ing services for the investment of funds in the teachers' defined
104 contribution system.

**§5-10D-2. Chairman and vice chairman; executive director;
employees; legal advisor; actuary.**

1 (a) The board shall elect from its own number a chairman
2 and vice chairman.

3 (b) The board shall appoint an executive director of the
4 retirement systems. The executive director shall be the chief
5 administrative officer of all the systems and he or she shall not
6 be a member of the board. He or she shall perform such duties
7 as are required of him or her in this article and as the board
8 from time to time delegates to him or her. The compensation of
9 the executive director shall be fixed by the board subject to the

10 approval of the governor. The executive director shall, with the
11 approval of the board of trustees, employ such administrative,
12 technical and clerical employees as are required in the proper
13 operation of the systems.

14 (c) Notwithstanding the provisions of section two, article
15 three of this chapter, the board shall employ and be represented
16 by an attorney licensed to practice law in the state of West
17 Virginia who is not a member of any of the retirement systems
18 administered by the board.

19 (d) An actuary, employed by the state or the board pursuant
20 to section four of this article, shall be the actuarial consultant to
21 the board.

22 (e) Prior to the first day of July, one thousand nine hundred
23 ninety-one, the expenses of the board for the administration of
24 the teachers' defined contribution retirement system created
25 pursuant to article seven-b, chapter eighteen of this code shall
26 be paid by the teachers retirement system created pursuant to
27 article seven-a of said chapter.

§5-10D-7. Compensation limitations; effective dates.

1 (a) Effective for plan years beginning after the thirty-first
2 day of December, one thousand nine hundred ninety-five, the
3 annual compensation of a participant taken into account in
4 determining benefits or contributions under any of the public
5 retirement plans administered by the board and which are
6 qualified plans under Section 401(a)(17) of the Internal
7 Revenue Code may not exceed one hundred fifty thousand
8 dollars, as indexed in accordance with the provisions of Section
9 401(a)(17) of the Internal Revenue Code. This provision shall
10 apply notwithstanding any other provision to the contrary in
11 this code and notwithstanding any provisions of any legislative
12 rule.

13 (b) In applying the limitations of subsection (a) of this
14 section, the consolidated public retirement board is authorized
15 to: (1) Adopt policies or procedures that may be necessary or
16 appropriate in applying the compensation limitations of Section
17 401(a)(17) to participants, including, without limitation, the
18 adoption and application of any transitional rules to implement
19 the compensation limitations; and (2) to take any actions that
20 may at any time be required by the internal revenue service
21 regarding compliance with the requirements of Section
22 401(a)(17), including, without limitation, distributions, credits,
23 set-asides or other adjustments.

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 1. DEPARTMENT OF ADMINISTRATION.

§5A-1-10. Public employee leave benefit analysis board created; purpose; leave benefit buy-back study authorized; factors to be considered; and report to the Legis- lature.

1 (a) There is hereby created a public employee leave benefit
2 analysis board. The initial and primary purpose of the board is
3 to analyze the fiscal impact on the state, and on the several
4 county boards of education whose employees participate in the
5 public employees insurance agency plan, the ability of partici-
6 pating employees upon retirement to convert accrued annual
7 and sick leave benefits for extended insurance coverage through
8 the public employees insurance agency or for enhanced
9 retirement benefits pursuant to section thirteen, article sixteen,
10 chapter five of this code. The board shall determine the
11 feasibility of instituting a voluntary leave benefit buy-back
12 program under which employers would pay participating
13 employees to buy back their accrued leave benefits. The board
14 shall focus first on employees subject to subsection (c), section
15 thirteen, article sixteen, chapter five of this code. If the board
16 determines such a program would be feasible and cost effective,

17 in comparison to the projected costs of continuing to maintain
18 the conversion of accrued leave for extended insurance cover-
19 age and/or enhanced retirement benefits, the board shall also
20 develop rules for the implementation and administration of such
21 a buy-back program. The board shall complete its analysis and
22 report its findings and recommendations with regard to this
23 subject to the Legislature on or before the first day of Septem-
24 ber, two thousand one. If, upon receipt of such report, the
25 Legislature determines that the buy-back program should be
26 implemented, it shall adopt the report of the board by concur-
27 rent resolution and no further action of the Legislature shall be
28 required to authorize implementation of the board's recommen-
29 dations.

30 (b) The board created in this section shall consist of five
31 voting members as follows: The secretary of the department of
32 administration, who shall serve as its chair; the executive
33 director of the consolidated public retirement board; the
34 director of the public employees insurance agency; the director
35 of the division of personnel; and the state superintendent of
36 schools or the superintendent's designee. Four members of the
37 Legislature, two appointed by the president of the Senate and
38 two appointed by the speaker of the House of Delegates, shall
39 also serve as nonvoting members, *ex officio*. It shall meet upon
40 the call of the chair and a simple majority of the members shall
41 constitute a quorum for the transaction of business.

42 (c) The expenses incurred by the board in studying the
43 feasibility of a voluntary buy-back program and developing
44 rules for implementation, if any, may not exceed one hundred
45 thousand dollars and shall be paid out of funds appropriated
46 therefor by the Legislature to the department of administration.

47 (d) The board's analysis of a voluntary leave benefit buy-
48 back program shall be based upon an appropriate actuarial

49 study, as determined by the board, and shall include at a
50 minimum the following:

51 (1) A full cost/benefit analysis which takes into account the
52 costs for the current sick and annual leave conversion for the
53 premium offset for extended insurance coverage as well as for
54 enhanced retirement benefits and projections for future costs
55 associated with such leave benefit conversion, stated in terms
56 of present value and as amortized over an appropriate period, as
57 determined by the board. This analysis shall also take into
58 account the ways in which the leave conversion programs affect
59 employees' use of sick and annual leave benefits during active
60 employment, as well as upon retirement;

61 (2) The analysis shall be based on detailed actuarial
62 assumptions in order to assure that cost projections are as
63 accurate as possible: Assumptions shall be developed using data
64 provided by the public employees insurance agency, the
65 division of personnel and the consolidated public retirement
66 board and shall be based on individual employee and partici-
67 pant data rather than summary data; actual experience for
68 employees and retirees shall be considered, as well as an
69 actuarially appropriate range of assumptions for projecting
70 future costs; all calculations of future costs shall take into
71 account projected increases in medical and prescription drug
72 costs; and all assumptions used for any calculation shall be
73 clearly stated, along with their basis;

74 (3) In order to be considered feasible or cost effective, the
75 leave benefit buy-back program must assure a monetary savings
76 to the state, in comparison to maintaining the conversion of
77 leave benefits upon retirement;

78 (4) Any leave benefit buy-back program shall be based on
79 the voluntary participation of affected employees;

80 (5) The design of any leave benefit buy-back program shall
81 anticipate payroll tax implications for public employers, in
82 addition to taking into consideration possible tax implications
83 for employees who might choose to participate;

84 (6) The design of any leave benefit buy-back program shall
85 provide that if employee demand exceeds revenues appropri-
86 ated by the Legislature for the program in any fiscal year,
87 eligibility for participation shall be based on seniority, as
88 measured by total years or parts thereof of credited service with
89 a participating employer;

90 (7) The design of any leave benefit buy-back program shall
91 provide that any employee who elects to participate may not
92 thereafter file an employee grievance or maintain a civil action
93 relating to participation in the program or the benefits derived
94 therefrom; and

95 (8) The design of any leave benefit buy-back program shall
96 presume limitations on the future accrual of leave benefits
97 which may be converted for extended insurance coverage or
98 enhanced retirement benefits by employees who elect to
99 participate in the program.

100 (e) Any rule developed by the board for implementing or
101 administering a leave benefit buy-back program as provided in
102 this section, including the rate of exchange to be offered to
103 employees who elect to participate, shall be considered inter-
104 pretative or procedural in nature and is not subject to rule-
105 making review by the Legislature, as provided in chapter
106 twenty-nine-a of this code.

107 (f) In addition to the factors to be included in the analysis
108 of a leave benefit buy-back program enumerated above, the
109 board created in this section shall also consider the salient
110 issues surrounding the provision of long-term disability
111 insurance coverage in lieu of certain benefits currently pro-

112 vided, retirement disability and employee donation of leave
113 benefits, as authorized by section twenty-seven, article six,
114 chapter twenty-nine of this code, including the potential cost
115 and benefit thereof relative to the total benefit/compensation
116 package made available to state employees and employees of
117 county boards of education.

118 (g) In furtherance of the board's purposes as stated in this
119 section, the department of administration is hereby authorized
120 to require all state spending units to collect, compile, maintain
121 and report data regarding employee sick and annual leave use,
122 balances, accrual and conversion. The superintendent of the
123 state board of education is hereby granted the same authority
124 with respect to the several county boards of education.

125 (h) It is the intention of the Legislature that the provisions
126 of this section shall supersede and govern any other provision
127 of this code or legislative rule to the contrary.

CHAPTER 8

**(S. B. 3001 — By Senators Tomblin, Mr. President, and Sprouse,
By Request of the Executive)**

[Passed June 10, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine-a, article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the number of magistrate court deputy clerks authorized for appointment to office.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. COURTS AND OFFICERS.

§50-1-9a. Magistrate court deputy clerks; duties; salary.

1 (a) Whenever required by workload and upon the recom-
2 mendation of the judge of the circuit court, or the chief judge of
3 the circuit court if there is more than one judge of the circuit
4 court, the supreme court of appeals may, by rule, provide for
5 the appointment of magistrate court deputy clerks, not to exceed
6 sixty-two in number. The magistrate court deputy clerks shall
7 be appointed by the judge of the circuit court, or the chief judge
8 if there is more than one judge of the circuit court, to serve at
9 his or her will and pleasure under the immediate supervision of
10 the magistrate court clerk.

11 (b) Magistrate court deputy clerks shall have the duties,
12 clerical or otherwise, as may be assigned by the magistrate
13 court clerk and as may be prescribed by the rules of the
14 supreme court of appeals or the judge of the circuit court or the
15 chief judge if there is more than one judge of the circuit court.
16 Magistrate court deputy clerks may also exercise the power and
17 perform the duties of the magistrate court clerk as may be
18 delegated or assigned by the magistrate court clerk.

19 (c) A magistrate court deputy clerk may not be an immedi-
20 ate family member of any magistrate, magistrate court clerk,
21 magistrate assistant or judge of the circuit court within the same
22 county, may not have been convicted of a felony or any
23 misdemeanor involving moral turpitude and must reside in this
24 state. For purposes of this subsection, "immediate family
25 member" means a mother, father, sister, brother, child or
26 spouse.

27 (d) Magistrate court deputy clerks shall be paid a monthly
28 salary by the state on the same basis and in the same amounts
29 established for magistrate assistants in each county, as provided
30 in section nine of this article.

CHAPTER 9

(H. B. 307 — By Mr. Speaker, Mr. Kiss, and Delegates Michael and Doyle)

[Passed June 10, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact 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 eighteen-b, relating to providing that for purposes of certain general salary increases for state employees, the term “state employees” does not include those state employees who are employed within the higher education system of the state or within the judicial or legislative branches of the government of this state.

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 eighteen-b, to read as follows:

ARTICLE 22. STATE LOTTERY ACT.

§29-22-18b. Definition of term “state employees”.

1 As used in subsection (b), section eighteen-a of this article,
2 the term “state employees” does not include those state employ-
3 ees who are employed within the higher education system of the
4 state or within the judicial or legislative branches of the
5 government of this state.

LEGISLATURE OF WEST VIRGINIA

ACTS

FOURTH EXTRAORDINARY SESSION, 2001

CHAPTER 1

**(H. B. 401 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed August 8, 2001; 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 two, in the amount of one million dollars from the division of environmental protection - mining and reclamation operations fund, fund 3324, fiscal year 2002, organization 0313.

WHEREAS, The Legislature finds that the account balance in the division of environmental protection - mining and reclamation

operations fund, fund 3324, fiscal year 2002, organization 0313 exceeds that which is necessary for the purposes for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

1 That the balance of funds from the division of environmen-
2 tal protection - mining and reclamation operations fund, fund
3 3324, fiscal year 2002, organization 0313, be decreased by
4 expiring the amount of one million dollars to the unappropri-
5 ated surplus balance of the state fund, general revenue, to be
6 available for appropriation during the fiscal year ending the
7 thirtieth day of June, two thousand two.

8 The purpose of this bill is to expire the sum of one million
9 dollars from the division of environmental protection - mining
10 and reclamation operations fund, fund 3324, fiscal year 2002,
11 organization 0313, to the unappropriated surplus balance in the
12 state fund, general revenue, for the fiscal year ending the
13 thirtieth day of June, two thousand two, to be available for
14 appropriation during the fiscal year two thousand two.

CHAPTER 2

**(H. B. 402 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed August 8, 2001; 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 two, in the amount of thirty million one hundred sixty-two thousand 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 two, to the governor's office, civil contingent fund, fund 0105, fiscal year 2002, 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 two; and

WHEREAS, The governor submitted to the Legislature a statement of the state fund, general revenue dated August 8, 2001, setting forth therein the cash balance and investments as of July 1, 2001, and further included the estimate of revenues for fiscal year 2002, less net appropriation balances forwarded and regular appropriations for fiscal year 2002; 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 two; and

WHEREAS, By the provision of the statement of the state fund, general revenue and 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 two; 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 thirty million one hundred sixty-two thousand 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 two, to fund 0105, fiscal year 2002, organization 0100, be supplemented and amended by increasing the total appropriation by forty-two million two hundred twenty-two thousand eight hundred fifty 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 2002 Org 0100

7			General
8		Act-	Revenue
9		ivity	Fund

10 1 Civil Contingent Fund - Total

11 Surplus (R) 238 \$ 42,222,850

12 The purpose of this bill is to expire the sum of thirty million
13 one hundred sixty-two thousand dollars from the revenue
14 shortfall reserve fund, fund 2038, organization 0201, and to
15 supplement the governor’s office, civil contingent fund, fund
16 0105, fiscal year 2002, organization 0100, in the budget act for
17 the fiscal year ending the thirtieth day of June, two thousand
18 two, by adding forty-two million two hundred twenty-two
19 thousand eight hundred fifty dollars to the appropriation for
20 civil contingent fund - total - surplus for expenditure during the
21 fiscal year two thousand two.

CHAPTER 3

**(H. B. 403 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed August 8, 2001; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of lottery net profits from the balance of moneys remaining as an unappropriated balance in lottery net profits, to the department of education and the arts - office of the secretary - control account - lottery education fund, fund 3508, fiscal year 2002, organization 0431; West Virginia development office - division of tourism, fund 3067, fiscal year 2002, organization 0304; and bureau of senior services, fund 5405, fiscal year 2002, organization 0508, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand two.

WHEREAS, The governor submitted to the Legislature a statement of the lottery net profits, dated August 8, 2001, setting forth therein the cash balance as of July 1, 2001, and further included the estimate of revenues for the fiscal year 2002, less regular appropriations for the fiscal year 2002; and

WHEREAS, It appears from the governor's statement there now remains an unappropriated balance which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand two; 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 two, to fund 3508, fiscal year 2002, organization 0431, be supplemented and amended by increasing the total appropriation by six hundred eighty-seven thousand five hundred dollars as follows:

1 TITLE II — APPROPRIATIONS.

2 Section 4. Appropriations from lottery net profits.

3 241—Department of Education and the Arts—

4 Office of the Secretary—

5 Control Account—

6 Lottery Education Fund

7 (WV Code Chapter 5F)

8 Fund 3508 FY 2002 Org 0431

9 10			Act- ivity	Lottery Funds
11	14a	Flood Reparations	400	\$ 687,500

12 And, that the total appropriation for the fiscal year ending
13 the thirtieth day of June, two thousand two, to fund 3067, fiscal
14 year 2002, organization 0304, be supplemented and amended
15 by increasing the total appropriation by eighty-nine thousand
16 six hundred fifty dollars as follows:

17 TITLE II — APPROPRIATIONS.

18 Section 4. Appropriations from lottery net profits.

19 237—West Virginia Development Office—

3310 APPROPRIATIONS [Ch. 3

20 *Division of Tourism*

21 (WV Code Chapter 5B)

22 Fund 3067 FY 2002 Org 0304

23	Act-	Lottery
24	ivity	Funds
25	6a Flood Reparations 400	\$ 89,650

26 And, that the total appropriation for the fiscal year ending
27 the thirtieth day of June, two thousand two, to fund 5405, fiscal
28 year 2002, organization 0508, be supplemented and amended
29 by increasing the total appropriation by ninety thousand dollars
30 as follows:

31 TITLE II — APPROPRIATIONS.

32 **Section 4. Appropriations from lottery net profits.**

33 *246—Bureau of Senior Services*

34 (WV Code Chapter 29)

35 Fund 5405 FY 2002 Org 0508

36	Act-	Lottery
37	ivity	Funds
38	12a Flood Reparations 400	\$ 90,000

39 The purpose of this supplementary appropriation bill is to
40 supplement the aforementioned accounts in the budget act for
41 the fiscal year ending the thirtieth day of June, two thousand
42 two, by adding a new item of appropriation for flood reparations
43 in the amount of six hundred eighty-seven thousand five
44 hundred dollars to the department of education and the arts -

45 office of the secretary - control account - lottery education fund,
46 and by adding a new item of appropriation for flood reparations
47 in the amount of eighty-nine thousand six hundred fifty dollars
48 to the West Virginia development office - division of tourism,
49 and by adding a new item of appropriation for flood reparations
50 in the amount of ninety thousand dollars to the bureau of senior
51 services for expenditure during the fiscal year two thousand
52 two.

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, 2001

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2130	214	2503	233	2738	64
2146	270	2504	231	2744	7
2199	91	2506	144	2751	226
2208	102	2513	134	2752	232
2209	152	2515	131	2755	55
2216	166	2516	251	2768	125
2218	123	2525	240	2772	42
2222	193	2526	241	2774	92
2225	245	2527	111	2775	257
2227	225	2540	180	2776	258
2243	89	2555	8	2777	256
2256	200	2567	237	2778	259
2271	143	2573	278	2782	2
2275	85	2583	314	2791	289
2310	246	2587	179	2792	286
2313	121	2591	313	2801	177
2329	71	2592	261	2803	6
2331	175	2594	204	2804	309
2371	223	2595	107	2814	150
2376	86	2599	235	2815	224
2385	10	2607	252	2817	59
2389	164	2655	186	2819	317
2405	69	2660	184	2823	156
2409	266	2663	183	2824	296
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2851	249	2947	216	3156	66
2856	206	2958	239	3175	119
2870	4	2959	54	3179	316
2871	142	2961	203	3192	68
2876	118	2968	292	3234	176
2877	212	2970	159	3235	12
2885	222	2974	205	3237	243
2891	133	2996	11	3238	101
2893	279	3009	153	3239	227
2894	282	3015	268	3240	124
2895	281	3020	304	3241	271
2896	221	3023	103	3242	141
2897	116	3049	50	3245	114
2898	113	3051	230	3247	13
2901	198	3052	229	3248	14
2903	49	3066	117	3252	312
2904	219	3080	161	3253	165
2905	149	3081	157	3254	18
2912	262	3120	146	3255	26
2934	104	3122	147	3256	23
2936	170	3128	96	3257	21

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Regular Session, 2001**SENATE BILLS**

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40	215	253	135	437	95
53	197	258	228	439	112
58	9	263	129	440	301
59	94	265	73	447	300
69	192	268	291	448	273
102	78	269	280	449	284
103	174	270	288	450	287
116	297	271	285	451	171
123	100	272	305	455	60
124	269	295	185	458	41
127	97	298	182	460	3
128	132	299	189	461	122
157	267	391	72	463	293
174	298	395	201	466	307
177	302	404	173	469	15
191	87	405	299	476	109
192	83	407	213	478	265
193	194	415	208	479	264
200	209	416	44	480	17
202	210	418	43	481	22
204	120	419	236	482	24
212	272	428	76	483	25
213	275	429	30	484	27
214	74	430	31	485	28
217	80	431	32	486	29
226	238	432	33	487	38

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490	138	556	82	692	148
491	172	559	254	694	48
492	162	565	244	695	47
493	155	573	128	696	67
494	154	574	310	700	191
496	277	579	70	701	37
497	290	586	45	703	110
498	283	594	311	706	16
503	168	601	61	707	20
504	158	603	62	708	218
507	160	605	207	711	260
508	167	606	137	712	255
511	202	620	51	713	315
513	163	630	130	716	99
516	79	631	195	717	242
520	308	640	136	720	234
524	84	647	145	721	1
525	151	650	295	724	115
526	63	652	93	727	220
529	98	661	303	728	318
530	75	674	52	730	181
546	126	676	108	732	306
549	294	688	81	734	140

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Senate Bills = 2, 3 Digits

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3	460	39	488	75	530
4	2870	40	489	76	428
5	2119	41	458	77	2844
6	2803	42	2772	78	102
7	2744	43	418	79	516
8	2555	44	416	80	217
9	58	45	586	81	688
10	2385	46	2942	82	556
11	2996	47	695	83	192
12	3235	48	694	84	524
13	3247	49	2903	85	2275
14	3248	50	3049	86	2376
15	469	51	620	87	191
16	706	52	674	88	3130
17	480	53	24	89	2243
18	3254	54	2959	90	237
19	690	55	2755	91	2199
20	707	56	2410	92	2774
21	3257	57	2418	93	652
22	481	58	34	94	59
23	3256	59	2817	95	437
24	482	60	455	96	3128
25	483	61	601	97	127
26	3255	62	603	98	529
27	484	63	526	99	716
28	485	64	2738	100	123
29	486	65	3131	101	3238
30	429	66	3156	102	2208
31	430	67	696	103	3023
32	431	68	3192	104	2934
33	432	69	2405	105	227
34	433	70	579	106	2722
35	434	71	2329	107	2595
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110	703	153	3009	196	689
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112	439	155	493	198	2901
113	2898	156	2823	199	2440
114	3245	157	3081	200	2256
115	724	158	504	201	395
116	2897	159	2970	202	511
117	3066	160	507	203	2961
118	2876	161	3080	204	2594
119	3175	162	492	205	2974
120	204	163	513	206	2856
121	2313	164	2389	207	605
122	461	165	3253	208	415
123	2218	166	2216	209	200
124	3240	167	508	210	202
125	2768	168	503	211	555
126	546	169	2486	212	2877
127	2482	170	2936	213	407
128	573	171	451	214	2130
129	263	172	491	215	40
130	630	173	404	216	2947
131	2515	174	103	217	2946
132	128	175	2331	218	708
133	2891	176	3234	219	2904
134	2513	177	2801	220	727
135	253	178	2847	221	2896
136	640	179	2587	222	2885
137	606	180	2540	223	2371
138	490	181	730	224	2815
139	10	182	298	225	2227
140	734	183	2663	226	2751
141	3242	184	2660	227	3239
142	2871	185	295	228	258
143	2271	186	2655	229	3052
144	2506	187	2717	230	3051
145	647	188	2685	231	2504
146	3120	189	299	232	2752
147	3122	190	2691	233	2503
148	692	191	700	234	720
149	2905	192	69	235	2599
150	2814	193	2222	236	419
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239	2958	266	2409	293	463
240	2525	267	157	294	549
241	2526	268	3015	295	650
242	717	269	124	296	2824
243	3237	270	2146	297	116
244	565	271	3241	298	174
245	2225	272	212	299	405
246	2310	273	448	300	447
247	2830	274	2721	301	440
248	244	275	213	302	177
249	2851	276	2846	303	661
250	2080	277	496	304	3020
251	2516	278	2573	305	272
252	2607	279	2893	306	732
253	552	280	269	307	466
254	559	281	2895	308	520
255	712	282	2894	309	2804
256	2777	283	498	310	574
257	2775	284	449	311	594
258	2776	285	271	312	3252
259	2778	286	2792	313	2591
260	711	287	450	314	2583
261	2592	288	270	315	713
262	2912	289	2791	316	3179
263	2111	290	497	317	2819
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DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Second Extraordinary Session, 2000

HOUSE BILLS

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DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

Second Extraordinary Session, 2000

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First Extraordinary Session, 2001

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DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

First Extraordinary Session, 2001

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2	103	8	1003
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4	105	10	1004
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DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

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HOUSE BILLS

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The first column gives the chapter assigned and the second column gives the bill number.

Third Extraordinary Session, 2001

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DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Fourth Extraordinary Session, 2001

HOUSE BILLS

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402	2		

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